BILLS OF EXCHANGE

AND PROMISSORY NOTES

SMYTHE

THE LAW OF BILLS OF EXCHANGE

AND

PROMISSORY NOTES

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OF

BILLS OF EXCHANGE

AND

PROMISSORY NOTES

BEING AN

ANNOTATION

OF

"THE BILLS OF EXCHANGE ACT, 1890"

BY

EDWARD H. SMYTHE, LL.D.

One of Her Majesty's Counsel

"Sed etiam legibus oportet esse armatam."

Toronto

THE J. E. BRYANT COMPANY (LIMITED)

1891

James Murray & Co., Printers and Binders,
Toronto.

TO

THE HON. SIR JOHN S. D. THOMPSON, K.C.M.G., Q.C., P.C.

MINISTER OF JUSTICE OF THE DOMINION

WHOSE SKILFUL LABOURS IN THE

UNIFICATION OF THE LAWS RESPECTING NEGOTIABLE INSTRUMENTS

HAVE BENEFITED ALIKE

CANADIAN COMMERCE AND JURISPRUDENCE

THIS WORK

IS BY KIND PERMISSION RESPECTFULLY DEDICATED

PREFACE.

My design has been to present to the practitioner an annotated copy of "The Bills of Exchange Act, 1890"; to collate the different sections which explain and illustrate each other; and to draw special attention to the alterations in the law introduced by the Act.

It will readily be perceived from its small compass that I have not in the course of this work attempted an exhaustive treatise upon the subject of "Bills and Notes." The valuable works of Byles Daniel, Chitty and others, so fully cover the whole ground that a the present it would seem unnecessary to do so.

One of the principal proofs of the utility and excellence of the codification effected by the English Act, is the infrequency of litigation upon its construction since it came into force on the 18th August, 1882. I have collected all the English decisions in the Law Reports upon this subject and find less than a dozen cases reported.

I have read all the recent Ontario decisions and many of the older ones, and with the exception of such as are over-ruled or obsolete, they will in general be found cited in their appropriate places in the course of the work. Only in a few instances have I ventured, and even then with great diffidence, upon suggestions of my own.

On a revision of the volume after it has gone to press I am conscious that I could introduce improvements, and I am not so vain as to anticipate that my work will escape the criticisms of others; I hope to take advantage of these, as well as of my own researches, in a future edition. In the meantime I crave the indulgence of the public, and especially of the profession to which I have the honour to belong.

I cannot conclude without acknowledging my deep obligation to Mr. Colin Fraser, B.A., Barrister, Toronto, for his valuable assistance in reading and correcting my proof.

EDW. H. SMYTHE.

KINGSTON, ONT., *November*, 1890.

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LIST OF ABBREVIATIONS.

BYLES ON BILLS..	14th English Edition, when the edition is not mentioned.
DANIEL ON NEGOTIABLE INSTRUMENTS.	3rd Edition, New York, 1882.
CHALMERS ON BILLS.....	Chalmers' Digest of the Law of Bills of Exchange, 3rd Ed., London, 1887.
U. C. R.....	Upper Canada and afterwards Ontario Queen's Bench Reports; volumes 1 to 46 inclusive.
C. P.....	Upper Canada and afterwards Ontario Common Pleas Reports; volumes 1 to 32 inclusive.
GR	Grant's Chancery Reports in Upper Canada and afterwards Ontario; volumes 1 to 29 inclusive.
P. R.....	The Ontario Practice Reports, volumes 1 to 12 inclusive; volume 13 now current.
A. R.....	The Ontario Appeal Reports, volumes 1 to 17 inclusive; volume 18 now current.
O. R.....	The Ontario Reports of Cases decided in the Queen's Bench, Common Pleas and Chancery Divisions of the High Court of Justice, volumes 1 to 18 inclusive; volume 19 now current.
O. S.....	The Old Series of Upper Canada Reports.
C. L. J. OR CAN. LAW JOURN...	The Canada Law Journal, Toronto, volumes 1 to 25 inclusive; volume 26 now current.
S. C. R.....	Supreme Court Reports of the Dominion, volumes 1 to 16 inclusive; volume 17 now current.
L. C. JUR.....	Lower Canada Jurist, 20 volumes.

In the citation of the English and American Reports the well-established modes of citation have been strictly adhered to and need not be recapitulated here.

INTRODUCTION.

In an elaborate treatise on the subject of bills of exchange and promissory notes it might be deemed part of the duty of the author to enter into a detailed history of these important instruments.

As the design of this work is to present at the earliest possible moment the law, as it is in Canada, since the passage of the "Bills of Exchange Act, 1890," no such attempt will be made in the course of the following pages. The reader and the student are alike referred to the excellent review of their origin to be found in the able judgment of Cockburn C. J. in Goodwin *v.* Roberts, L.R. 10 Exch. p. 337.

It will be sufficient for the present purpose to explain that Bills of Exchange are of much older use than promissory notes. Bills of Exchange were not known to the Civil Law. They seem to have been first current in the little mediæval States of Italy, whence their use gradually passed to France and some other parts of the continent of Europe, and still later to England.[1]

The law of Italy was founded upon the Civil Law, or it might be more correct to say, was in fact the Civil Law modernized to suit the innovations of commerce; and perhaps it thus happens that some of the chief incidents of bills owe their origin to the Civil Law in its modern application: *e.g.* the presumption of consideration in their favour,[2] contrary to the general rule of the Common Law which prevails respecting all other simple contracts. From the universality of the usage of bills the law relating to them obtained recognition as a portion of the Law Merchant and was eventually acknowledged as an integral part of our Common Law. This recognition was doubtless however not effected until many a struggle between Westminster Hall and the mercantile world.

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[1] Goodwin *v.* Roberts, L.R. 10 Exch., per Cockburn C. J. at p. 346.

[2] See Justinian Inst. Tit. XV., "De Verborum Obligatione," as to contracts which were binding irrespective of any consideration.

Promissory notes were placed on the same footing with bills of exchange by the Statute 3 & 4 Anne, Cap. 9. "That Act was passed in consequence of the refusal of Lord Holt to concede to the custom which had sprung up among merchants of treating promissory notes as negotiable, the effect which would, at a somewhat later period, probably have been attributed to it. His Lordship, departing somewhat from that excellent good sense which usually characterized him, treated the endeavour to uphold the negotiability of promissory notes with some indignation, saying that "it proceeded from the obstinacy and opinionativeness of the merchants, who were endeavouring to set the law of Lombard Street above the law of Westminster Hall."[1]

The Imperial "Bills of Exchange Act, 1882" which is the basis of our own Act, is said to have been the first English attempt at a code. Sir Henry Maine in his Ancient Law says: "the most celebrated system of jurisprudence known to the world begins, as it ends, with a code."[2] Whether the codification of the law relating to bills marks a return to primitive simplicity, or is a step in the more perfect development of our system of jurisprudence, will remain, for some future writer, with more time at his disposal than the present, an interesting subject of enquiry. In any event the utility of the measure is not open to question. The advantage of an Act, which in less than one hundred sections embraces the whole body of the law, is apparent. In a single sentence the finality of the law is now established, which in the past has been perhaps the subject of endless litigation, involving great expense, and often ruin to unfortunate suitors. Propositions which the text writers hitherto enforced by reference to a "codeless myriad of precedents" are in the Act definitely set at rest in the course of a section and often in a single sentence: and it is fondly hoped that the student toiling at

> "Mastering the lawless science of our law,
> That wilderness of single instances,"

will find a pathway beaten out for him here, which will save him many hours of weary labour.

Leaving out of the question the advantages or disadvantages of codes, it must be acknowledged that the state of the Law in Canada before the act was most unsatisfactory. Perhaps it would not be an

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[1] Sm. Merc. Law, 10th Ed. p. 223; see Clark *v.* Martin, 2 Ld. Raym. 757.
[2] Ancient Law, p. 1.

exaggeration to assert that the law of Bills and Notes was scarcely identical in any two Provinces. In the "Act Respecting Bills of Exchange and Promissory Notes," R.S.C. Cap 123, its complexity was evinced by the fact that many of the sections were framed for and applied to individual provinces; whilst in the Province of Quebec the Civil Code intervened with enactments which even in their terminology, not to speak of their provisions, were unfamiliar to the lawyers of the sister Provinces. As the power of legislating with regard to bills and notes resided exclusively in the Dominion Parliament, it devolved upon that legislature to deduce order out of chaos, and to introduce homogenity throughout the Dominion in the law respecting them. After most careful preparation this arduous task was assumed by the present Minister of Justice, the Honourable Sir John Thompson, and the success which has attended his efforts will be a lasting monument to the skill and ability with which he performs the onerous duties of his high office.

Hereafter a bank, merchant, or other person taking a bill or note drawn or made, indorsed or payable in another Province, may rely on the uniformity of the law in such other Province, and is in no danger of being misled by differences in modes and places of payment as hitherto. A noticeable instance of the inconvenience existing before the Act, occurred in a case[1] where a note made in Ontario was payable at the Mechanics' Bank, Montreal, without restrictive words, and the maker assumed that the law of Quebec was the same as that of his own Province, and that the note was payable generally.

For some purposes it will still, however, be necessary to consider the laws of the different Provinces in matters relating to Bills and Notes.

The Statute of Limitations is a law of the remedy,[2] and the time when the remedy is barred will depend on the law of the Province where payment is attempted to be enforced by action. As the Statute of Limitations is not uniform in the several Provinces it will be necessary for the future as in the past to be cautious in this particular.

The capacity to contract will also depend on the law of the several provinces, and the rule *locus regit actum* will apply. If therefore a married woman, domiciled in another Province, becomes a

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[1] Court *v.* Scott, 32 C.P. 148.

[2] Huber *v.* Steiner, 2 Bing. N.C. 202; British Linen Co. *v.* Drummond, 10 B & C. 903.

party there to a bill or note, her liability will be governed by the law of that Province. Should she enter into a contract in a Province other than that of her domicile the tendency at least of English and American law is certainly in favour of its validity being ascertained by the *lex loci contractus*. It will thus be seen that section 71 of the Act respecting "Conflict of Laws" will not be confined exclusively to the consideration of foreign bills.

The identity of our Act in its main features with the English Act must prove beneficial. English decisions will be directly in point and will secure harmony in the construction of the Act in all parts of Canada. The particulars in which our law now differs from the English are pointed out in the notes to section 2 of the Act at page 1 *post*.

On the 12th June, 1890, an order was passed by His Excellency the Governor-General in Council, to the effect that the English rather than the American mode should be followed in future in spelling the final syllable of such words as "honour" in all official documents in the Canada Gazette and in the Dominion Statutes. This order was not passed in time to affect the Statutes of last Session, but it has afforded me very great pleasure to conform to the rule in the text of my work, and I have taken the liberty in order to secure uniformity to correct the spelling in the Act.

In my reference to "The Bank Act," 53 Vic., Cap. 31 (Dom.), I have referred to it as "The Bank Act" now in force, to prevent confusion. Readers will kindly bear in mind that this phraseology was adopted in view of the fact that this work is not intended merely for use during the next few months. As a matter of fact "The Bank Act" in question does not come into force until the first of July, 1891.

E. H. S.

AN ACT RELATING TO BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES.

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

PART I.

PRELIMINARY.

Short Title.

1. This Act may be cited as "The Bills of Exchange Act, 1890."

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 1.*)

The power to legislate respecting Bills of Exchange and Promissory Notes is limited by "The British North America Act, 1867," to the Dominion Parliament. See that Act, 30 and 31 Vic., Sec. 91 (18). (Imp.).

This Act is based on the English Act, 45 and 46 Vic., Cap. 61, "The Bills of Exchange Act, 1882." It is in effect a codification of the law relating to Bills and Notes, as it existed at its passage, amended in a few particulars. The primary object of its introduction was not so much to amend the law, as to render it uniform in the several Provinces, and this end has been attained, except that the statutory holidays in the Province of Quebec are somewhat more numerous than in the other Provinces, and that the fees and provisions as to protests are not identical in Quebec with those in the others.

Sec. 1. The law of Canada may now be said to be the same as the English law on the subject of Bills and Notes, with perhaps only the following exceptions: The Canadian Act preserves the principle that where the last day of grace is a Sunday, or statutory holiday, the bill or note is payable, not as in England, on the preceding, but on the following day; that sight bills in Canada bear days of grace; that a banker is not deemed here to have paid a demand draft, in due course, when the indorsements have been forged, or made without authority; and that the practice, or rather the propriety of the practice, of protesting inland bills and notes is recognized by our Act.

The Act alters the law in Ontario which was practically the English law, except in the instances first pointed out, in—

Sec. 4 (2). By making a bill *prima facie* an inland bill.

Sec. 6. (2). Providing that a bill may be drawn on two or more persons jointly, but not in the alternative.

Sec. 7. (2). That a bill may be payable to two or more payees either jointly or in the alternative, or to the holder of an office for the time being.

Sec. 7. (3). That when payable to a fictitious payee or non-existing person, a bill may be treated as payable to bearer.

Sec. 8. (1), (3) and (4). Making new provisions as to the negotiability of bills, the chief of which is that the omission of the word "order" will not of itself restrain the negotiability.

Sec. 12. Authorizing the insertion of the date when omitted.

Sec. 15. Providing for resort to a referee in case of need.

Sec. 18. (2). Fixing the date in case of acceptance after dishonour.

Sec. 24. Providing that the drawer of a cheque, if payee's name is forged, must give notice to the

drawee within one year after he has acquired notice thereof.

Sec. 33. Permitting conditional indorsements to be disregarded.

Sec. 36. (3). Making provision when bills payable on demand shall be overdue.

Sec. 39. (4). Excusing delay for presentment for acceptance in some cases.

Sec. 41. (2). Excusing presentment for acceptance in certain cases.

Sec. 42. Giving two days for acceptance after the day of presentment.

Sec. 44. (2) (3). Defining the effect of qualified acceptances.

Sec. 45. (7). Providing for presentment at post-offices.

Sec. 49. (1), (*f*). Making the return of a dishonoured bill equivalent to notice of dishonour.

Sec. 51. (2). Making the protest of foreign bills compulsory.

Sec. 52. (2). Dispensing with presentment at the place of payment, when specified, on the day of maturity, as far as the acceptor is concerned, and providing for the costs of action in that case.

Sec. 60. Providing that a bill be discharged, if the acceptor becomes the holder at, or after, maturity.

Sec. 61. (1) (2). Defining renunciation.

Sec. 63. (1). Making an altered bill valid in some cases.

Sec. 71. (2), (*f*). Making Notarial Instruments of Protest, made out of Canada, *prima facie* evidence.

Sec. 72. Enacting that a cheque is a Bill of Exchange.

Sec 1

Sec. 73. Requiring cheques to be presented within a reasonable time.

Sec. 90. (2). Providing that the sealing of bills be equivalent to signing, etc., by corporations

Sec. 91. Laying down a rule for the computation of time.

Sec. 92. Making noting sufficient in some cases.

Sec. 93. Providing for protests by Justices of the Peace.

Sec. 94. Enacting that dividend warrants may be crossed.

Some of these amendments are rather declaratory of than in alteration of the Common Law. Such, for instance, as Sec. 72 enacting that a cheque shall be a Bill of Exchange. A cheque was always deemed in effect a Bill of Exchange.[1]

Sections 75 to 81 inclusive introduce the practice of crossing cheques in Canada.

Sections 19 (2), 52 and 86 change the law, as far as Ontario and Prince Edward Island are concerned, and abolish the distinction between bills and notes, payable generally and at particular places, and make the addition of the words "only, and not otherwise or elsewhere" hereafter unnecessary.

In the Imperial Act, Section 97 (2) provided that "the rules of the Common Law including the Law Merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to Bills of Exchange, Promissory Notes and Cheques." Though retained in our Act as originally introduced, this section was struck out by the Senate through a desire that the Act should have completeness as a code.

The convenience of the provision of the enactment referred to was exemplified in *Exparte* Robarts *re* Gillespie, 61 Q. B. D. 702, where it was held that Sec. 57 is only

[1] Keene *v.* Beard, 8 C.B., N.S. 372; McLean *v.* Clydesdale Banking Co., 9 App. Cas. 95.

intended to describe the damages which may be treated as liquidated, for the purpose of special indorsement on a writ, and that it is still therefore the law by force of Sec. 97 (2) as laid down in Walker *v.* Hamilton, 1 D. F. & G. 602, and in *re* General South American Co., 7 Ch. D. 637, that the drawer of a bill, drawn in a foreign country, but accepted in England, is entitled, upon the bill being dishonoured and protested, to recover from the acceptor, not only the amount of the bill with interest, but also, all such reasonable expenses as may have been caused by dishonour, including the expenses of re-exchange.

Some difficulty may hereafter arise here from the absence of such an enactment in our code.

Interpretation.

2. In this Act, unless the context otherwise requires,—

"Acceptance."

(*a*) The expression "Acceptance" means an acceptance completed by delivery or notification.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 2.*)

As to notification see *post* proviso to Section 21.

"Action."

(*b*) The expression "Action" includes counter-claim and set-off.

A counter-claim is not an action.[1]

"Bank."

(*c*) The expression "Bank" means an incorporated Bank or Savings Bank carrying on business in Canada.

This sub-section in the Imperial Act includes a body of persons whether incorporated or not. The word "Bank"

[1] Irwin *v.* Brown, 12 P.R. 639.

Sec. 2. when used in this Act is not limited to those to which the Banking Act applies.

"Bearer." (*d*) The expression "Bearer" means the person in possession of a Bill or Note which is payable to bearer.

"Payable to bearer" that is, on its face, so that the holder of a Bill or Note originally payable to order, and indorsed in blank, is not within this definition, although such bill thenceforward becomes payable to bearer; Sec. 8 (3).

"Bill;" "Note." (*e*) The expression "Bill" means Bill of Exchange, and "Note" means promissory note.

See *post* Sec. 3 and Sec. 82, where these instruments are defined.

"Delivery." (*f*) The expression "Delivery" means transfer of possession, actual or constructive, from one person to another.

It is essential to a valid indorsement that it should be followed by delivery, *post* sub-section (*h*).

"Holder." (*g*) The expression "Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

The word "Holder" is the generic term, and includes "unlawful holder," as a thief or finder; a holder who holds lawfully, but not for value; a holder for value, see definition of, Sec. 27 (2); and a holder in due course, Sec. 29.

"Indorsement." (*h*) The expression "Indorsement" means an indorsement completed by delivery.

It must be written on the Bill itself or on an allonge, *post* Sec. 32. **Sec. 2.**

Delivery is defined *ante* sub-section (*f*).

(i) The expression "Issue" means the first delivery of a bill or note complete in form to a person who takes it as a holder. "Issue."

It is the delivery of the bill, etc., to the first person who holds it for value and can sue upon it.[1]

(j) The expression "Value" means valuable consideration. "Value."

This, like all the preceding sub-sections, is mere interpretation.

The expression "valuable consideration" is defined at length, *post* Sec. 27.

(k) The expression "Defence" includes counter-claim. "Defence."

This sub-section, which is not in the Imperial Act, was added in the Senate.

It must not be overlooked that this section is introduced by the words: "In this Act unless the context otherwise requires." The interpretation clauses, therefore, must be used in this restricted sense, and are not of general application.

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[1] See Girvin *v.* Burke, 19 O.R. 204, which distinguishes between the issue, *i.e.*, the delivery between the original parties, and all subsequent transfers.

PART II.

BILLS OF EXCHANGE.

FORM AND INTERPRETATION.

Bill of exchange defined.

3. (1). A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 3.*)

See *post* Sec. 11 as to what is a determinable future time.

"A sum certain in money." It must be a definite sum and nothing more.[1] A note made in Canada payable in American currency at Chicago was held a good promissory note.[2] See further as to what is a sum certain, *post* Sec. 9.

There must be a specified person to whom the bill is to be payable, or it may be payable to bearer. If left blank it is not a bill of exchange, but *prima facie* authority to the holder to fill it up, see Sec. 20 (1); and this was the law before the enactment.[3]

When instrument is not such bill.

(2). An instrument which does not comply with these conditions, or which orders any act

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[1] Mortgage Insurance Corporation *v.* Commissioners of Inland Revenue, 21 Q.B.D. 352.

[2] Third National Bank of Chicago *v.* Cosby, 41 U.C.R. 402; S.C., 43 U.C.R. 58; see also Greenwood *v.* Foley, 22 C.P. 352; Wallace *v.* Souther, 16 S.C.R. 717.

[3] Crutchley *v.* Mann, 5 Taunt, 529; Bank of Toronto *v.* Cobourg, 7 O.R. 1.

to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange. Sec. 3.

"Except as hereinafter provided," referring to the provision contained in Section 9, that a bill may be payable according to an indicated rate of exchange, etc. These words are not in the Imperial Act.

(3). An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional. Unconditional order defined.

"Please pay W. H. the sum of $138.40 for flooring supplied to your buildings, etc.," was held not an order to pay out of a particular fund, but a bill of exchange and to require acceptance.[1] An order to pay out of a particular fund may operate as an equitable assignment;[2] a bill of exchange does not; see *post* Sec. 53. This was the law before the Act.[3]

(4). A bill is not invalid by reason— Bill not invalid for reasons specified.

(*a*) That it is not dated;

(*b*) That it does not specify the value given, or that any value has been given therefor;

(*c*) That it does not specify the place where it is drawn or the place where it is payable.

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[1] Hall *v.* Prittie, 17 A.R. 306.

[2] Buck *v.* Robson, 3 Q.B.D. 686.

[3] Lamb *v.* Sutherland, 37 U.C.R. 143.

Secs. 3, 4, 5.

The true date may be inserted by any holder, Sec. 12 (1). If there be no date the bill will be considered as dated at the time it was issued.[1] The date may be shown by parol.[2] Where the date of a note bearing interest from date has been omitted, the date of its delivery may be shown and interest computed from that time.[3] It may be shown that there is a mistake in the date.[4]

It was considered well settled before the Act that the words *value received* were not at all material. Byles on Bills, 95.

Inland and foreign bills.

4. (1). An inland bill is a bill which is, or on the face of it purports to be, (*a*) both drawn and payable within Canada, or (*b*) drawn within Canada upon some person resident therein. Any other bill is a foreign bill.

If not noted as foreign.

(2). Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 4.*)

Sub-section (2) is new and is important in this, that a foreign bill must be protested, Sec. 51 (2); whereas an inland bill, except in the Province of Quebec, need not be, Sec. 51 (1), notice of dishonour alone being sufficient, and that may be given in any way provided by Sec. 49.

If different parties to bill are the same person.

5. (1). A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

Option of holder in case specified.

(2). Where in a bill drawer and drawee are

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[1] De La Courtier *v.* Bellamy, 2 Show. 422; Hague *v.* French, 3 B. & P. 173; Giles *v.* Bourne, 6 M. & Sel. 74; Seldenridge *v.* Connable, 32 Indiana 375.

[2] Davis *v.* Jones, 17 C.B. 625.

[3] Richardson *v.* Ellett, 10 Texas 190.

[4] Drake *v.* Rogers, 32 Maine 524.

the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note. Secs. 5, 6.

(Imperial Act 45 and 46 Vic., Cap. 61, Sec. 5.)

As to the meaning of the expression "a fictitious person," see Vagliano *v.* Bank of England, 23 Q.B.D. 243. "Person" by the Imperial Act included "a body of persons, whether incorporated or not." This was deemed to be an unnecessary provision in our Act, for by our Interpretation Act, R.S.C., Cap. 1, Sec. 7 (22), "person" includes "any body corporate and politic or party, etc."

Persons not having capacity to contract would embrace infants, minors and corporations having no capacity or power to incur liability on a bill. As to the effect of indorsement by them, see Sec. 22 (2).

6. (1). The drawee must be named or otherwise indicated in a bill with reasonable certainty. Drawee to be named.

(2). A bill may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. If there are more than one.

(Imperial Act 45 and 46 Vic., Cap. 61, Sec. 6.)

Hence the acceptors of a bill, unlike the makers of a note, must be jointly, and never jointly and severally, liable; see Sec. 84. Unless all the drawees accept, it is a qualified acceptance; Sec. 19 (2) (*d*). Judgment against one is a bar

Secs. 6, 7. to an action against the others,[1] even on the original consideration.[2]

Certainty required as to payee.

7. (1). Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 7.*)

An instrument not payable to bearer or a payee named or indicated with reasonable certainty is not a bill; see notes to Sec. 3. The payee may be the holder of an office for the time being; see sub-section (2); if a fictitious person, it may be treated as payable to bearer, sub-section (3).

If payable to two or more payees, or to holder of office.

(2). A bill may be made payable to two or more payees jointly, or it may be made payable, in the alternative, to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

This is new. Formerly there could not be alternative payees.[3] Before the Act it was held in England, that an instrument payable to the Secretary of the Indian, etc., Assurance Society, or order, was not a promissory note, the payee being uncertain.[4]

If payee is non-existing.

(3). Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

Before the Act the acceptor of such a bill was only liable to a *bona fide* holder for valuable consideration in cases in

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[1] King *v.* Hoare, 13 M. & W. 494.

[2] Cambefort *v.* Chapman, 19 Q.B.D. 229; Kendall *v.* Hamilton, 4 App. Cas. 504.

[3] Blanckenhagen *v.* Blundell, 2 B. & Ald. 417.

[4] Cowie *v.* Stirling, 6 E. & B. 333.

which it could be shown that the name of the payee was fictitious to the knowledge of the acceptor.[1] It was thought by some writers (see Byles on Bills, p. 91, note (*m*) at the end,) that the effect of this section would be to render it immaterial hereafter whether the acceptor knew it or not; but the judgment of the Court of Appeal in Vagliano *v.* Bank of England, 23 Q.B.D. 243 at p. 261, seems to indicate that this is not the case. Secs. 7, 8.

When a person drew a forged bill and selected the name of an existing firm as payees, who were not parties to the bill and were never intended to be, whose names he likewise forged, it was held that the payees were not fictitious so as to make such bill payable to bearer.[2]

8 (1). When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable. Certain bills valid but not negotiable.

(Imperial Act 45 and 46 Vic., Cap. 61, Sec. 8.)

New—Striking out the word "order" after the name of the payee is not evidence of such an intention, as by subsection (4) the omission of the word "order" does not affect the negotiability of the bill.[3]

If the bill is not negotiable, it cannot be assigned in Ontario. See Rev. Stat. Ont., Cap. 122, Sec. 13.

(2). A negotiable bill may be payable either to order or to bearer. Payable to order or bearer.

(3). A bill is payable to bearer which is expressed to be so payable, or on which the To bearer.

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[1] Minet *v.* Gibson, 1H. Bl. 569; Phillips *v.* ImThurm, L.R. 1 C.P. 463.

[2] Vagliano *v.* Bank of England, 23 Q.B.D. 243.

[3] Decroix *v.* Meyer, 25 Q.B.D. 343.

Sec. 8. only or last indorsement is an indorsement in blank.

New. Before this if a bill were indorsed in blank, its negotiability could not afterwards be restrained by a special indorsement.[1]

Now, the bill will only be payable to bearer, where the only or last indorsement is an indorsement in blank, unless it is expressed to be payable to bearer on its face. In the latter case, no indorsement can be restrictive of its negotiability.

To order. (4). A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

The effect of this sub-section is to radically alter the law. Hereafter a bill or note is negotiable notwithstanding the omission of the words "order" or "bearer" after the name of the payee. This will prevent the recurrence of the difficulty, which arose in Bank of Hamilton *v.* Harvey, 9 O.R. 655, decided in 1885, which was affirmed on appeal to the Supreme Court; see 16 S.C.R., *App.* 714. In that case the makers of a note not negotiable were held liable to the indorsee of the payee, on the ground that it was signed by the makers with the intent that it should be used by the payee and that it was inequitable to take advantage of a mere mistake or inadvertence.

When a bill payable to order was altered by the acceptor by striking out the word "order" it was held that it was still negotiable.[2] The acceptance is not restrictive of the

[1] Walker *v.* Macdonald, 2 Exch. 527.
[2] Decroix *v.* Meyer, 25 Q.B.D. 343.

negotiability, if it is expressed to be in favour of the payee only.[1] Secs. 8, 9.

Before the Act, a note not payable to order or bearer was absolutely non-negotiable. Nor could it have been assigned under Rev. Stat. Ont. 1887, Cap. 122, Sec. 6 *et seq.*, as by Sec. 13, those sections do not apply to Bills and Notes.

(5). Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option. Option of payee.

A bill payable to the order of A. B. is nevertheless payable to him or his order at his option, *i. e.*, he can demand payment without indorsement. Is he bound to give a receipt? In England he would be under 43 Geo. III., Cap. 126, Sec. 5—not in force here (in Ontario).[2]

9. (1). The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid— Sum payable.

(*a*) With interest;

(*b*) By stated instalments;

(*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;

(*d*) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill.

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[1] *Ibid.*

[2] In Lockridge *v.* Lacey, 30 U.C.R. 494, it was held a person tendering money is entitled to require a receipt. See also Kaiser *v.* Boynton, 7 O. R. 143.

Sec. 9. (*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 9.*)

As to the date from which interest runs, see sub-section (3) of this section; as to the rate after maturity, see notes to that sub-section, and to section 57 (*a*) (2).

Although a bill can be drawn payable by instalments, it cannot be indorsed for one or more of the instalments. An indorsement must be of the entire bill. A partial indorsement does not operate as a negotiation; see *post* Sec. 32 (1) (*b*).

When a bill payable by instalments provides that "upon default the whole shall become due" are days of grace to be allowed? Probably not, as *semble* the Statute of Limitations begins to run at once, as to the whole amount from the first default.[1]

Where a bill drawn in a foreign country is made payable here, in the currency of that country, if not otherwise stipulated, the amount payable must be calculated according to the rate of exchange for sight drafts on the day it falls due. See *post*, Sec. 71 (2) (*d*) and notes thereto.

Before the Act a note made in Canada, payable in American currency at Chicago, was held a good note.[2]

Discrepancy between figures and words.

(2). Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

Before the Act, if there was any difference, or discrepancy, the sum in the body was that for which the bill was payable.[3] It was also held that the marginal figures were not an essential part of the bill.[4]

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[1] See Hemp *v.* Garland, 4 Q.B. 519.

[2] Third National Bank of Chicago *v.* Cosby, 41 U.C.R. 402, S.C. 43 U.C.R. 58. See also Greenwood *v.* Foley, 22 C.P. 352; Wallace *v.* Souther, 16 S.C.R. 717.

[3] Saunderson *v.* Piper, 5 Bing. N.C. 425.

[4] Garrard *v.* Lewis, 10 Q.B.D. 30.

(3). Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof.

Interest.—Any rate the bill may bear, and if no rate is mentioned, that of the country where drawn, in an action against the drawer.[1] The rate in Canada is 6 per cent., R. S. C., Cap. 127, Sec. 2. There is no implied contract to pay a higher rate than legal interest after maturity.[2] *Prima facie*, the rate stipulated for in the contract up to maturity may be adopted as a reasonable rate to be allowed as damages.[3]

If interest is stipulated for at such higher rate by such expressions as "until paid" or "until fully paid" it is a matter of contract, and interest at such higher rate is collectible.[4] If interest is not reserved by the instrument, it is payable after maturity, at the rate of six per cent.; see *post*, Sec. 57 (*a*) (2). See also Rev. Stat. Ont. 1887, Cap. 44, Secs. 85 and 86.

Bill payable on demand.

10. (1). A bill is payable on demand—

(*a*) Which is expressed to be payable on demand or on presentation; or—

(*b*) In which no time for payment is expressed.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 10.*)

The Imperial Act contains the words "Or at sight" after "demand," in clause (*a*). These words were in the first draft

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[1] Gibbs *v.* Fremont, 9 Exch. 31; *sed vide*, Story's "Conflict of Laws," Sec. 296.

[2] Cook *v.* Fowler, 7 H.L. 27; Dalby *v.* Humphrey, 37 U.C.R. 514; Holmes *v.* Thompson, 38 U.C.R. 292.

[3] Powell *v.* Peck, 15 A.R. 138; Simonton *v.* Graham, 8 P.R. 495; Downey *v.* Parnell, 2 O.R. 82.

[4] St. John *v.* Rykert, 4 A.R. 213; affirmed 10 S.C.R. 278; Powell *v.* Peck, *Supra*; Grant *v.* People's Loan & Deposit Company, 17 A.R. 85.

Secs. 10, 11.

of our Act, but were struck out in Committee. Days of grace are not allowed on demand bills; see Sec. 14. The effect of this section and section 14 is to make sight bills bear days of grace, and in this respect our law differs from the English law.

Acceptance, etc., when overdue.

(2). Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

When a bill or note was indorsed after maturity, in order to make the indorser liable, it was necessary, before the Act, that it should be presented and dishonoured before an action would lie against him.[1] American authorities require notice of non-payment to be given also.[2] The safest course would be to give notice here. And *quære* whether by force of this sub-section it is not absolutely necessary to do so—since a bill payable on demand must be presented within a reasonable time; see *post* Sec. 45 (2) (*b*) and Sec. 48 requiring notice.

A promissory note payable on demand with interest was held to be a present debt.[3] It is not to be treated as overdue merely because it bears date some time back.[4]

Bill payable at a future time.

11. (1). A bill is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable—

(*a*) At a fixed period after date or sight:

(*b*) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain.

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[1] Davis *v.* Dunn and Parke, 6 U.C.R. 327.
[2] Stockman *v.* Riley, 2 McCord 395.
[3] *In re* George, Francis *v.* Bruce, 44 Ch. D. 627.
[4] Glasscock *v.* Balls, 24 Q.B.D. 13.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 11.*)

As to how the time of payment is determined, see Sec. 14 (3).

As to contingencies.

(2). An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

A contingency is an event which may, or may not happen, and must be distinguished from an event which must happen, though the time of happening is uncertain; as to which, see preceding sub-section.

Omission of date in bill payable after date.

12. (1). Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 12.*)

This section with its proviso is new.

It would still be necessary, if it were disputed by the party liable, to show that it was the true date; see proviso next following. It would be otherwise if the addition of the date were not apparent, and the bill afterwards came into the hands of a holder in due course.[1] The insertion of the true date independently of the Act was not regarded as a material alteration.[2] The date is a material particular of a bill or note; see *post* Sec. 63.

As to wrong date.

Provided that (*a*) where the holder in good faith and by mistake inserts a wrong date, and (*b*)

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[1] Montague *v.* Perkins, 17 Jur. 557; and see the proviso to this sub-section.

[2] Mason *v.* Bickle, 2 A. R. 291.

Secs. 12, 13.

in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date.

The omission of the date confers *prima facie* authority to fill it in, Sec. 20 (1); and it would be inequitable to allow the party liable upon the instrument, to take advantage of his own negligence, to the prejudice of an innocent party, when a mistake occurs in consequence of it.

Date *prima facie* evidence.

13. (1). Where a bill or an acceptance, or any indorsement on a bill, is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 13.*)

The effect of this section is not to contravene the established rule, that a written instrument cannot be varied by parol; but it may be important for other purposes to show that the bill was not drawn on the day it bears date. A bill may be antedated or post-dated, see next sub-section; but it might happen that the party liable upon it was not *sui juris* or *in esse*, at the date arbitrarily selected.[1] In such cases it will be competent to show the true date, and the proper party may, notwithstanding, be liable thereon.[2] It might also be necessary to show it was not the true date where a question arose under the Statute of Limitations.[3]

Certain datings not to invalidate.

(2). A bill is not invalid by reason only that

[1] Passmore *v.* North, 13 East 517.

[2] Drake *v.* Rogers, 32 Me., 524; Germania Bank *v.* Distler, 11 N.Y.S.C., (4 Hun.), 633.

[3] Montague *v.* Perkins, 17 Jur. 557.

it is antedated or post-dated, or that it bears date on a Sunday (or other non-juridical day.) Secs. 13, 14.

A bill is not invalid merely, if, in antedating or post-dating it, a Sunday should happen to be selected. It can be shown that it was not the actual date. This section will not, it is submitted, have the effect of validating a bill actually drawn on Sunday, if otherwise void. See Rev. Stat. Ont. 1887, Cap. 203, secs. 1 and 8.[1]

The words in brackets are not in the Imperial Act. They were added in the Senate. It is difficult to see their utility, as no days but Sundays are *dies nefasti* under our Law.

14. (1). Where a bill is not payable on demand, the day on which it falls due is determined as follows:— Computation of time of payment.

(*a*) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Days of grace.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 14.*)

Under the Imperial Act a bill payable at sight is a bill payable on demand. See section 10 of that Act. It is otherwise in Canada and therefore sight bills bear days of grace, as they are not excepted by this section.

Provided that:

(1). Whenever the last day of grace falls on a legal holiday or non-juridical day in the Province where any such bill is payable, then the Non-juridical days.

[1] Wilt *v.* Lai, U.C. Queen's Bench, Hilary Term, 13 Victoriæ—not reported—where it was held that giving or taking a security on a Sunday is not void as a buying or selling. Reg. *v.* Berriman, 4 O.R. 282; Vail *v.* Duggan, 7 U.C.R. 568.

Sec. 14. day next following, not being a legal holiday or non-juridical day in such Province, shall be the last day of grace.

Under the Imperial Act, section 14, sub-section (1) (*a*) the bill is due the day preceding the Sunday, or holiday, subject to some exceptions mentioned in the same sub-section (1) (*b*) which are not material here.

What shall be such.

(2). In all matters relating to bills of exchange the following and no other shall be observed as legal holidays or non-juridical days, that is to say :

In all Provinces except Quebec.

(*a*) In all the Provinces of Canada, except the Province of Quebec—

Sundays ;
New Year's Day ;
Good Friday ;
Easter Monday ;
Christmas Day ;

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning Sovereign ; and if such birthday is a Sunday, then the following day ;

The first day of July (Dominion Day), and if that day is a Sunday, then the second day of July as the same holiday ;

Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada ; and the day next following New Year's Day and Christmas Day, when those days respectively fall on Sunday ;

(*b*) And in the Province of Quebec the said days, and also— Sec. 14. In Quebec.

The Epiphany ;
The Annunciation ;
The Ascension ;
Corpus Christi ;
St. Peter and St. Paul's Day ;
All Saints' Day ;
Conception Day ;

(c) And also, in any one of the Provinces of Canada, any day appointed by proclamation of the Lieutenant-Governor of such Province for a public holiday, or for a fast or thanksgiving within the same, or being a non-juridical day by virtue of a statute of such Province. In every Province.

Taken from R.S.C. Cap. 123, Sec. 3. This statute reproduced 35 Vic., Cap. 8, Sec. 8 (Dom.), as amended by 42 Vic., Cap. 47, and 46 Vic., Cap. 20, Sec. 11. 35 Vic., Cap. 8, formed part of the Bank Act. The Bank Act in force now, 53 Vic., Cap. 31 (Dom.), contains no provision as to Bank Holidays. Consequently it is presumed that Banks will henceforward be governed as to their holidays by the provisions of this Act—at least so far as the due date of bills and notes is concerned.

(3). Where a bill is payable (at sight, or) at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment. Days to be computed when time begins to run.

The words in brackets are not in the Imperial Act. Under that Act a bill payable at sight is payable on demand and

Sec. 14. does not require to be accepted under Sec. 39. Under our Act, Sec. 39, a bill payable at sight must be presented for acceptance. At or after sight will mean at or after acceptance.[1]

A bill need not be accepted until the second day after presentment, Sec. 42 ; and a bill payable at sight is not due until the third day thereafter, see *ante* sub-section (1) (*a*). In all other cases the period is computed by excluding the day from which the time begins to run, but including the day on which it falls due or would fall due but for the days of grace.

When time begins to run.

(4). Where a bill is payable at (sight or) a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery.

The words in brackets are not in the Imperial Act. An immediate right of recourse against the drawers and indorsers accrues to the holder as soon as a bill is dishonoured by non-acceptance under Sec. 43 (2).

It will be necessary to compute the time from the date of the noting or protest in the case of an acceptance for honour ; see Sec. 64 (5) : as to protest for non-delivery, see Sec. 51 (8).

"Months."

(5). The term "month" in a bill means (the) calendar month.

Word in brackets not in Imperial Act.

Reckoning of time.

(6). Every bill which is made payable at a month or months after date, becomes due on the same numbered day of the month in which it is

[1] Holmes *v.* Kerrison, 2 Taunt. 323; Sturdy *v.* Henderson, 4 B. and Ald. 592 ; Campbell *v.* French, 2 H. Bl. 163.

made payable as the day on which it is dated, unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that month, with the addition, in all cases, of the days of grace. Secs. 14, 15.

This sub-section is not in the Imperial Act, but is taken from R.S.C. Cap. 123, Sec. 95. It was originally introduced by the late Hon. John Hillyard Cameron[1] to remove a doubt, and was rather declaratory of, than in change of the Common Law.[2] Bills drawn respectively at one month after date on the 28th, 29th, 30th and 31st of January, will each of them fall due on the same day, namely the 3rd day of March, except in Leap Year, in which case the first named would fall due on the 2nd.[3]

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he thinks fit. Case of need.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 15.*)

This is a new provision in Ontario. Under the Quebec code Art. 2290 it was obligatory to present the bill to the referee. Under this Act it is optional. Before a bill can be presented to the referee, it must be protested, see *post* Sec. 66 (1).

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[1] 35 Vic., Cap. 10 (Dom.).

[2] Campbell *v.* Lane, 25 Texas (*supplement*) 93; Byles on Bills, 6 Am. Ed. 204.

[3] Byles on Bills, 12 Ed., p. 200; Chitty on Bills, 11 Ed., note at p. 264.

Secs. 15, 16, 17.

The referee in case of need is often simply called the case of need. This section is somewhat in modification of Sec. 6 (2), that there cannot be alternative drawees.

Optional stipulations by drawer or indorser.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(a) Negativing or limiting his own liability to the holder;

(b) Waiving, as regards himself, some or all of the holder's duties.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 16.*)

This was the law before the enactment. An indorser might indorse without incurring responsibility, by the addition, after his signature, of the words, in French, "*sans recours*," or in English, "without recourse," or any similar expression. He might also by apt words waive his right to presentment, notice of dishonour, etc. Although such indorsements are in a sense conditional, it is submitted, they are not within the provision of section 33 (*qu. vide*), if, indeed, such a question could ever arise.

Definition of acceptance.

17. (1). The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 17.*)

And he is thenceforward the acceptor. His mere signature is sufficient, see next sub-section. If he omits the date, which would be material in a bill payable at or after sight, in order to ascertain the date of maturity, Sec. 14 (3), the holder may insert the true date, Sec. 12. Although, not free from doubt, under this Act, see Sec. 42, it is, nevertheless, conceived, that the true date, is the day of the date of the first presentment of the bill; and this accords with strict mercantile practice, see Sec. 18 (3), where that date is assumed to be the proper date.

Sec. 17.

Requisites of acceptance.

(2). An acceptance is invalid unless it complies with the following conditions, namely :—

(*a*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient ;

(*b*) It must not express that the drawee will perform his promise by any other means than the payment of money ;

(3). Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature.

Sub-section (3) is not in the Imperial Act. See Section 32 (2) where there is a similar provision in the case of the payee of a bill payable to order.

Compare this sub-section with R.S C., Cap. 123, Sec. 4. It was enacted by 19 and 20 Vic., Cap 97, Sec. 6 (Imp.), "that no acceptance * * * * shall be sufficient * * * * *unless the same be in writing on such bill and signed by the acceptor.*" Under this latter Act it was decided that the mere signature of the drawee was insufficient.[1] Dissatisfaction with that decision led to the passage of the Imperial Act, 41 and 42 Vic., Cap. 13, which was "in effect a declaration by the Legislature that the decision of the English Common Pleas Division in the case of Hindhaugh *v.* Blakey was erroneous."[2] This sub-section reproduces the effect of 41 and 42 Vic., Cap. 13.

At common law a mere verbal acceptance was sufficient ;[3]

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[1] Hindhaugh *v.* Blakey, 3 C.P.D. 136.
[2] Steele *v.* McKinlay, 5 App. Cas., 754, per Ld. Selbourne at p. 785.
[3] Pillans *v.* Van Mierop, 3 Burr. 1663.

Secs. 17, 18.

but not of a bill before it was drawn.[1] A letter promising to accept was also a good acceptance.[2] Under this Act it is not an acceptance, but a mere agreement.[3]

The acceptance may be by an agent; see *post* Sec. 90.

Time for acceptance.

18. (1). A bill may be accepted—

(*a*) Before it has been signed by the drawer, or while otherwise incomplete;

(*b*) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 18.*)

Prima facie, a bill is deemed to have been accepted before maturity.[4] When it is accepted in an incomplete form, it is *prima facie* authority to the holder to fill it up, Sec. 20. When accepted overdue it is, as regards the acceptor, a bill payable on demand, Sec. 10 (2).

Date, in case of acceptance after dishonour.

(2). When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

This sub-section is new. Judge Chalmers, who was the draughtsman of the English Act, at page 41 of his work on "Bills of Exchange," says, "this sub-section was added in Committee. It accords with Mercantile practice and was

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[1] Johnston *v.* Collings, 1 East 98; Bank of Ireland *v.* Archer, 11 M. & W. 383.

[2] Powell *v.* Monnier, 1 Atk. 611; Billing *v.* Devaux, 3 M. & G. 565.

[3] See Torrance *v.* Bank of British North America, 5 P.C. 246; Bank of Montreal *v.* Thomas, 16 O.R. 503.

[4] Roberts *v.* Bethel, 12 C.B. 778.

intended to secure that, apart from special agreement, the holder should be put, as far as possible, in the same position as if the bill had not been dishonoured." As the holder is so entitled, should the drawee refuse to accept of the date of the first presentment, the holder would perhaps take it at his peril, for it might be held in the case of a sight bill a qualification as to time, see Sec. 19 (2); which he may refuse to take, Sec. 44 (1).

General and qualified acceptances.

19. (1). An acceptance is either (*a*) general, or (*b*) qualified: a general acceptance assents without qualification to the order of the drawer; a qualified acceptance in express terms varies the effect of the bill as drawn.

(*Imperial Act 45 and 46 Vic., Cap. 61., Sec. 19.*)

Taking a qualified acceptance discharges prior parties. See *post* Sec. 44 (2). The holder may refuse to take it, and treat the bill as dishonoured, *Ibid* (1).

Qualified acceptance.

(2). In particular, an acceptance is qualified which is—

(*a*) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated; but an acceptance to pay at a particular specified place is not conditional or qualified.

(*b*) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(*c*) Qualified as to time;

(*d*) The acceptance of some one or more of the drawees, but not of all.

Secs. 19, 20. This section differs very materially from the English Act. The latter retains the law as enacted in 1 and 2 Geo. IV., Cap. 78, to the effect that an acceptance payable at a particular place is a general acceptance unless expressed to be payable "there only, and not otherwise or elsewhere." This enactment was followed in Canada, as far as Ontario is concerned, by 7 William IV., Cap. 5. Sec. 1, preserved down to the time that the Act annotated came in force, in R.S.C., Cap. 123, Sec. 16.

The bill as originally introduced by the Minister of Justice did not follow its English prototype in this particular, but the words were added in Committee. The Senate, however, amended the section and made it as it now reads.

The effect of the amendment is to make it competent for the acceptor to name a place of payment, without restriction, and to make the presentment there necessary in all cases. See *post* Sec. 52 (1) and (2).

The law as to promissory notes is now the same. See *post* Sec. 86.

Where the acceptor altered the bill by striking out the word "order" after the payee's name, and wrote across its face that it was accepted in favour of him only, it was held the bill was still negotiable by force of Sec. 8 (4); that the words written across the face were not restrictive of its negotiability; and that the acceptance did not vary the terms of the bill, and was not a qualified but a general acceptance.[1]

An acceptance of a bill payable at a Banker's is tantamount to an order to the banker to pay the bill to the person who, according to the law merchant, is capable of giving a good discharge for it.[2]

Inchoate instruments. **20.** (1). Where a simple signature on a blank paper is delivered by the signer in order that it

[1] Decroix *v.* Meyer, 25 Q.B.D. 343.

[2] Roberts *v.* Tucker, 16 Q.B. 560; Vagliano *v.* Bank of England 23 Q.B.D. 255.

may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount,* using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. Sec. 20

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 20.*)

*"The stamp will cover."—*Ibid.*

This proceeds on the principle that one who signs and authorizes another to fill up the blank, is negligent, and must take the consequence of his negligence.

Before the Act came into force, it was held in England, that the acceptor of a bill was liable upon it, where the amount in the body had been left blank and filled in for a larger amount than the figures in the margin, although the latter was the amount for which the acceptor desired to accept it.[1]

Giving a blank bill or note signed is equivalent to giving a letter of credit for an indefinite sum,[2] and it is presumed to be delivered when originally signed.[3]

The authority to fill in a payee's name in a blank space was implied in favour of a holder for value before this enactment.[4]

The acceptor's death does not revoke the authority to complete the formality of the bill.[5]

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[1] Garrard *v.* Lewis, 10 Q.B.D. 30.

[2] Collis *v.* Emmett, 1 H. Bl. 313; La Banque Nationale *v.* Sparks, 27 C.P. 320; S.C., 2 A.R. 112.

[3] Clark *v.* Union Fire Insurance Co., 10 P.R. 313; Snaith *v.* Mingay, 1 M. & Sel. 87; Lennig *v.* Ralson, 23 Penn. 137.

[4] Crutchley *v.* Mann, 5 Taunt. 529; Bank of Toronto *v.* Cobourg, 7 O.R. 1.

[5] Carter *v.* White, 20 Ch. D. 225; affirmed 25 Ch. D. 666.

Secs. 20, 21.

When to be filled up.

(2). In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given; reasonable time for this purpose is a question of fact:

As to subsequent holder.

Provided, that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time, and strictly in accordance with the authority given.

Where a person indorses a completed note, and hands it back to the maker to discount or make use of it, he holds himself out to the public as bound to every person who shall take the same for value;[1] taking it, for a pre-existing debt is giving value;[2] even though as merely collateral security therefor.[3]

Contract not complete until delivery.

21. (1). Every contract on a bill, whether it is the drawer's, the acceptor's or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Exception.

Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled

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[1] Montrose *v.* Clark, 2 Sand. 115.

[2] Cross *v.* Currie, 5 A.R. 31.

[3] Canadian Bank of Commerce *v.* Gurley, 30 C.P. 583.

to the bill, that he has accepted it, the acceptance then becomes complete and irrevocable. Sec. 21.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 21.*)

This is the notification referred to in Sec. 2 (*a*). The acceptor might by adopting this course become liable before the delivery of the bill. See Sec. 2 (*f*). But in case of an indorsement it must be completed by delivery, Sec. 2 (*h*). It must be delivered to the indorsee or to the agent of the indorsee. If the indorser delivers the bill to his own agent he can recover it, if to the agent of the indorsee, he cannot recover it.[1]

(2). As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery— Requisites as to delivery.

(*a*) In order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be;

(*b*) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill;

But if the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed. When valid delivery presumed.

"Holder in due course;" see Sec. 29.

(3). Where a bill is no longer in the possession of a party who has signed it as drawer, *Prima facie* evidence.

[1] *Ex parte* Cotè, L. R. 9 Ch. App. 27.

Secs. 21, 22.

acceptor or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

If it had been stolen there would be no delivery, and without delivery, it would presumably not be valid in the hands of an innocent holder.[1] Where title has to be made through a forged indorsement, the holder has no right to sue upon, or retain the bill.[2] Honest acquisition confers no title if made through an invalid indorsement.[3]

CAPACITY AND AUTHORITY OF PARTIES.

Capacity of parties.

22. (1). Capacity to incur liability as a party to a bill is co-extensive with capacity to contract:

As to corporations.

Provided, that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor or indorser of a bill, unless it is competent to it so to do under the law for the time being in force relating to * *such corporation.*

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 22.*)

* "Corporations," *Ibid.*

The proviso to this sub-section will have the effect of removing doubt in Provincial Charters, which purport to

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[1] Baxendale *v.* Bennett, 3 Q.B.D. 525; *sed vide* Ingham *v.* Primrose, 7 C.B.N.S. 82; Young *v.* Grote, 4 Bing. 253.

[2] Burchfield *v.* Moore, 3 E. & B. 683; Johnson *v.* Windle, 3 Bing. N.C. 225.

[3] Jenks *v.* Doran, 5 A.R. 558.

give the power, see "The Ontario Joint Stock Companies Letters Patent Act," R.S.O. Cap. 157, Sec. 59. Sec. 22.

A corporation incurs no liability by becoming a party to negotiable instruments, unless empowered by its Act of Incorporation to do so.[1] As to the mode in which corporations may make, indorse or accept bills and notes, see *post* Sec. 90 (2). Married women have now the same power in Ontario to contract with regard to their separate estate as single women, R.S.O. Cap. 132, Sec. 3 (2).

An infant incurs no liability upon a note or bill;[2] even though given for necessaries.[3] The contracts of lunatics and drunkards are not void but voidable only.[4] But complete drunkenness is a defence.[5]

Drawing or indorsing by person not competent.

(2). Where a bill is drawn or indorsed by an infant, minor or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

The maker of a note, payable to the order of a person not otherwise having the capacity to contract, guarantees his capacity to indorse such instrument, and is estopped from denying the latter's power to do so.[6] And the knowledge of the indorsee does not prevent such estoppel applying.[7] See *post* Sec. 54 (*b*) and 55 (1) (*b*). When the accommodation indorsers of a corporation, which had no power to make

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[1] Peruvian Railways Company *v.* Thames and Mersey Marine Ins. Co., L.R. 2 Ch. Ap. 617.

[2] Trueman *v.* Hurst, 1 T.R. 40.

[3] Williamson *v.* Watts, 1 Camp. 552; Swasey *v.* Vanderheyden, 10 John's R. 33.

[4] Molton *v.* Camroux, 2 Exch. 487; Matthews *v.* Baxter L.R. 8 Ex. 132; Robertson *v.* Kelly, 2 O.R. 163.

[5] Gore *v.* Gibson, 13 M. & W. 623.

[6] Perkins *v.* Beckett, 29 C.P. 395.

[7] *Ibid.*; Merchants' Bank *v.* United Empire Club, 44 U.C.R. 468.

Secs. 22, 23.

a note, had been compelled to pay it to the holder, they were held entitled to recover back the sum paid for it, in an action against such corporation.[1]

A married woman's contracts were void at Common Law.[2] But now in Ontario by R S.O. Cap 132, her disability is almost if not entirely removed. But she only contracts with reference to her separate estate, see Sec. 3 (2) of that Act.[3]

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that—

Exceptions.

(*a*) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

(*b*) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 23.*)

The partners are not liable if the name of the firm is varied;[4] nor are they if the partner signing is not acting within the scope of his authority.[5]

A judgment against one partner on a bill of exchange,

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[1] Brockville & Ottawa R. W. Co. *v.* Canada Central R. W. Co., 41 U.C.R. 431.

[2] Cannan *v.* Farmer, 3 Ex. 698.

[3] Moore *v.* Jackson, 16 A.R. 431; Leake *v.* Duffield, 88 L. T. Jour. 45.

[4] Williamson *v.* Johnson, 1 B. & C. 146; Faith *v.* Richmond, 11 A. & E. 339; Kirk *v.* Blurton, 9 M. & W. 284; Royal Canadian Bank *v.* Wilson, 24 C.P. 362; Hovey *v.* Cassels, 30 C.P. 230; The Canadian Bank of Commerce *v.* Wilson, 36 U.C.R. 9.

[5] Federal Bank *v.* Northwood, 7 O.R. 389; Royal Canadian Bank *v.* Wilson, *supra;* Odell *v.* Cormack, 19 Q.B.D. 223.

given by him alone for the joint debt, is a bar to an action against another on the original contract.[1] Secs. 23, 24.

The drawing or accepting of bills is not, in general, necessary in farming, mining or professional partnerships, and therefore it has been held that one of the partners in such concerns, has no implied authority to use the name of the firm on a bill or note;[2] even though given for partnership purposes.[3]

And even trading partners have no implied power to use the name of the partnership for the debt of a third person,[4] or for their own private debts.[5] The mere taking of a joint security for a separate debt implies notice to the holder that it was given in bad faith.[6] See Sec. 29.

Forged or unauthorized signature.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 23.*)

An acceptor is precluded from denying the signature of the drawer, and an indorser, from denying the signature of

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[1] Cambefort *v.* Chapman, 19 Q.B.D. 229.

[2] Hedley *v.* Bainbridge, 3 Q.B. 316; Greenslade *v.* Dower, 7 B. & C. 635; Dickinson *v.* Valpy, 10 B. & C. 128; Wilson *v.* Brown, 6 A.R. 411; S.C. 7 A.R. 181.

[3] McCord *v.* Field, 27 C.P. 391.

[4] Wilson *v.* Brown, *supra.*

[5] McConnell *v.* Wilkins, 13 A.R. 438.

[6] *Ibid.*; Richmond *v.* Heapy, 1 Stark 202; see also Standard Bank *v.* Dunham, 14 O.R. 67.

Sec. 24. the drawer and of all previous indorsers; see *post* Secs. 54 and 55. Before the Act if an agent indorsed without authority, a bill payable only to order, such indorsement conveyed no title except against the party indorsing.[1] But authority may be implied from the course of business; so where a cheque which was payable to the order of a company was cashed by a bank on the indorsement of the secretary only, (this being contrary to the Company's By-laws,) but it was shown, that he had on previous occasions, cashed cheques in the same way; it was held the bank was protected.[2] A forged indorsement confers no title,[3] even in the hands of an innocent holder.[4]

There can be no estoppel of a forgery,[5] but it is otherwise when the indorsement is merely unauthorized. The rule laid down is, that ratification and acquiescence can only be of an act which may be valid in itself and not illegal.[6] But under this section a party may be precluded by his conduct from denying the genuineness of his signature to an innocent holder.[7]

Proviso.

Proviso: as to payment on forged indorsement.

Provided, that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery: (And provided also, that if a cheque, payable to order, is paid by the drawee upon a forged indorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have

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[1] Fearn *v.* Filica, 7 M. & G. 513.

[2] Thorold Manufacturing Co. *v.* Imperial Bank, 13 O.R. 330; see also Merchants' Bank *v.* Bostwick, 3 A. R. 24.

[3] Burchfield *v.* Moore, 3 E. & B. 683; Johnson *v.* Windle, 3 Bing. N.C. 225.

[4] Jenks *v.* Doran, 5 A.R. 558.

[5] Brook *v.* Hook, L.R. 6 Exch. 89; Merchants' Bank *v.* Lucas, 15 A.R. 573.

[6] La Banque Jacques Cartier *v.* La Banque D'Epargne, 13 App. Cas. at p. 118.

[7] Brook *v.* Hook, L.R. 6 Ex. at p. 100.

no right of action against the drawee for the recovery back of the amount so paid, or no defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery; and in case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights.) Secs. 24, 25.

The words in brackets are not in the Imperial Act; nor were they in ours as it passed the House of Commons. They were added in the Senate, and were in a measure a substitute for Sec. 60 of the English Act. Sec. 60 of that Act was an exception to Sec. 24.

The effect of the enactment as contained in the proviso is, that until a year after notice, the customer of the bank may object that any cheque has been paid on a forged indorsement; after the year he is concluded.

As to what is notice is a question of fact, to be decided by a court or jury. It may be either actual or constructive. As framed originally this clause provided in effect, that the delivery of the cheque or pass-book showing its payment, was notice. In many cases doubtless this would still constitute constructive notice at least. The difficulty on the part of banks of proving notice, it is apprehended, will prevent the provision from being of much benefit to them.

25. A signature by procuration operates as notice that the agent has but a limited authority Procuration signatures.

Secs. 25, 26.

to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 25.*)

The person who takes a bill with such a signature ought, in order to exercise due caution, to require production of the agent's authority.[1]

The real scope of the authority may be collected from any admissible evidence.[2] If the agent exceeds his authority, he may be personally liable.[3] If he acts within the scope of it, though fraudulently, the principal is bound.[4]

Person signing as agent or in representative capacity.

26. (1). Where a person signs a bill as drawer, indorser or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 26.*)

Thus if A. signs a bill, for "The O. Manufacturing Co., per A. Secretary," he is not personally liable, but otherwise, if he signs "A. Secretary of the O. Manufacturing Co." In the latter case the words attached to the signature are regarded as mere *designatio personæ*. This section is

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[1] Attwood *v.* Munnings, 7 B. & C. 278 *per* Bayley J. at p. 283.

[2] Cooper *v.* Blacklock, 5 A.R. 535; Thorold Manufacturing Co *v.* Imperial Bank, 13 O.R. 330.

[3] West London Commercial Bank *v.* Kittson, 12 Q.B.D. 157.

[4] Molsons Bank *v.* Brockville, 31 C.P. 174.

merely declaratory of the Common Law.[1] In the debate in the Senate, see Senate Hansard, 1890, p. 383, Hon. Mr. Abbott, who introduced the bill as it had passed the Commons, seems to have thought the construction of this section would be, that a person signing is not liable, if he states for whom he is agent, but would be if he did not, *i.e.* that the mere addition *e.g.*, of the word, "agent," would not exempt him from liability, but it would if he stated for instance, "agent for A.B." It is submitted, however, with all deference to so eminent an authority on Commercial Law, that this view is not correct. See Chalmers on Bills, p. 70. Sec. 26.

If a person by implication makes an untrue statement as to his authority on a negotiable instrument, he is guilty of a constructive fraud, and may be held liable, notwithstanding the provision of this section.[2]

(2). In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. Rule for determination of signature

The maxim "*ut res magis valeat*" governs the construction. It might happen, if the agent was not liable, no one would be. So, where a bill addressed "To the President Midland Railway" was accepted in these words, "For the Midland Railway of Canada accepted, H. R. secretary, G. A. C. President," it was held that G. A. C. (who was admitted to be the president,) was liable personally, as the bill was not drawn on the Company.[3]

On similar principles, the terms of an acceptance were construed most strongly against the acceptor.[4]

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[1] Thomas *v.* Bishop, 2 Stra. 955; Hagerty *v.* Squier, 42 U.C.R. 165; Foster *v.* Geddes, 14 U.C R. 239; Thompson *v.* Feeley, 41 U.C.R. 229.

[2] West London Commercial Bank *v.* Kittson, 12 Q.B.D. 157.

[3] Madden *v.* Cox, 5 A.R. 473; see also Brown *v.* Holland, 9 O.R. 48.

[4] Decroix *v.* Meyer, 25 Q.B.D. 343.

Sec. 27.

THE CONSIDERATION FOR A BILL.

Valuable consideration how constituted.

27. (1). Valuable consideration for a bill may be constituted by—

(*a*) Any consideration sufficient to support a simple contract;

(*b*) An antecedent debt or liability; such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 27.*)

Before the Act it was generally the rule that a pre-existing debt was a sufficient consideration to entitle the transferee to all the rights of a holder for value,[1] although merely transferred as collateral security for such debt.[2] A subsisting debt from a third person is a good consideration,[3] but it was held otherwise if no time was given.[4] When the bill matures, if unpaid, the original debt revives.[5] The taking of the note is not payment, even *quoad* third parties.[6] Forbearance of an action for a *bona fide* claim is a sufficient consideration.[7]

A note given for a debt barred by the Statute of Limitations is made upon a sufficient consideration.[8]

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[1] Cross *v.* Currie, 43 U.C.R. 599; S.C. 5 A.R. 31; Misa *v.* Currie 1 App. Cas. 554; Swift *v.* Tyson, 16 Peters 97.

[2] Canadian Bank of Commerce *v.* Gurley, 30 C.P. 583. See a somewhat similar decision, Bank of Toronto *v.* Irwin, 28 Gr. 397; and a contrary one Pressey *v.* Trotter, 26 Gr. 154, 161.

[3] Popplewell *v.* Wilson, 1 Stra. 264.

[4] Ryan *v.* McKerral, 15 O.R 460; Merchants' Bank *v.* Robinson, 8 P.R. 117. But *quære*, whether this would be the case now, since by clause (*b*) of this sub-section, it is immaterial whether the bill is payable on demand or not. See McLean *v.* Clydesdale Banking Co., 9 App. Cas. 95, per Ld. Blackburn p. 115.

[5] Canadian Bank of Commerce *v.* Woodward, 8 A.R. 347.

[6] Blackley *v.* Kenny, 19 O.R. 169.

[7] Langridge *v.* Dorville, 2 B. & Ald. 417.

[8] Wright *v.* Wright, 6 P.R. 295; Austin *v.* Gordon, 32 U.C.R. 621.

Sec. 27.

Where a defendant could rely upon a total failure, he may also set up a partial failure of consideration.[1] Before "The Ontario Judicature Act" in Ontario, the extent to which the consideration failed, must have been liquidated ;[2] but now where damages in that behalf are claimed, or the amount is otherwise not liquidated, the defendant may avail himself of such defence by way of counter-claim.[3]

When holder is holder for value.

(2). Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

This sub-section defines a holder for value. It is sufficient, no matter if the bill has subsequently been the subject of a gift, if any prior holder has given value, to constitute the donee a holder for value as regards the acceptor and all parties to the bill prior to the time when such value was given.[4] A donee cannot obviously sue his donor. If upon the gift of a bill payable to the order of the donor he did not indorse it, the legal title would remain in the donor but the beneficial interest in the donee.[5]

A holder for value is not necessarily a holder in due course. See *post* Sec. 29, as to the definition of a holder in due course. The distinction is that a holder in due course, is not only a holder for value, but must have acquired the bill, before its maturity and without notice of fraud, illegality, or other vice.

These expressions are much superior to the old and somewhat ambiguous phrase "*bona fide* holder for value."

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[1] Star Kidney Pad Company *v.* Greenwood, 5 O.R. 28 ; McGregor *v.* Bishop, 14 O.R. 7.

[2] Georgian Bay Lumber Co. *v.* Thompson, 35 U.C.R. 64 ; Lapp *v.* Firstbrook, 24 C P. 239.

[3] Garland *v.* Thompson, 9 O.R. 376.

[4] Milnes *v.* Dawson, 5 Exch. 948.

[5] Barton *v.* Gainer, 3 H. & N. 387 ; *Re* Murray, Purdham *v.* Murray, 9 A.R. 369.

Secs. 27, 28. This new phraseology was first introduced by the English Act.

As to lien.

(3). Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Even though it be held as merely collateral security for a pre-existing debt.[1] If the holder of the bill having the lien acquired it before maturity, without notice, etc., he would also be a holder in due course.

Accommodation party to a bill.

28. (1). An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(Imperial Act 45 and 46 Vic., Cap. 61, Sec. 28.)

The party accommodated is not necessarily a party to the bill.[2] Every accommodation party holds himself out to the public by his signature to be absolutely bound to every person, who shall take the same for value, to the same extent as if that value was personally advanced to him, or on his account, or at his request.[3] Taking such a bill for a pre-existing debt is a taking for value, even as regards an accommodation party.[4]

His liability.

(2). An accommodation party is liable on the bill to a holder for value; and it is immaterial

[1] Canadian Bank of Commerce *v* Gurley, 30 C.P. 583; see also Bank of Toronto *v.* Irwin, 28 Gr. 397.

[2] Oriental Financial Corporation *v.* Overend, L.R. 7 Ch. App. 142.

[3] Montross *v.* Clark, 2 Sand. 115.

[4] Cross *v.* Currie, 5 A.R. 31; Fetters *v.* Muncie National Bank, 34 Ind. 251.

whether, when such holder took the bill, he knew such party to be an accommodation party or not. Secs. 28, 29.

This is declaratory, and makes no alteration in the law: except, perhaps, that hereafter the holder's knowledge, that a party to a bill is an accommodation party, will not affect the latter's liability should circumstances arise which would constitute a defence if he was only a surety; *e.g.* if time was given.[1]

29. (1). A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:— Holder in due course.

(*a*) That he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact;

(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 29.*)

See notes to Sec. 27 (2) *ante*. The expression, "holder in due course," is introduced by this Act, following the English Act, and it is to be hoped that it will henceforward be of common use. Every holder is *prima facie* a holder in due course, Sec. 30 (2).

(2). In particular, the title of a person who negotiates a bill is defective within the meaning Title defective in cases specified.

[1] Smith *v.* Knox, 3 Esp. 46; Charles *v.* Marsden, 1 Taunt. 224.

Sec. 29. of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

The words, "in particular," are used to introduce examples of what precedes, and what follows may be deemed a statutory illustration. It is not necessarily exhaustive and the title to the bill may be defective, although free from the vices mentioned. The words, "force and fear," are the equivalent in Scotch law for "duress." The Imperial Act applies to Scotland, and they were introduced for that reason.

Where the maker was induced to sign a note to prevent a forgery committed by his son becoming public, it was held that the payee could not recover in an action upon it.[1] Using the criminal law to get a settlement of a civil claim is illegal, and the security thus obtained is invalid.[2]

Right of subsequent holder.

(3). A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Any holder deriving title from a holder in due course, is himself a holder in due course, whether he gave value or

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[1] Doyle *v.* Carroll, 28 C.P. 218.

[2] Shorey *v.* Jones, 15 S.C.R. 398. See generally as to this, Kneeshaw *v.* Collier, 30 C.P. 265; Watts *v.* Mitchell, 26 Gr. 570; Bell *v.* Riddell, 2 O.R. 25, S.C. 10 A.R. 544. As to threats, undue influence, etc., see Sheard *v.* Laird, 15 A R. 339; Armstrong *v.* Page, 25 Gr. 1.

not; subject always to the condition, that he has not himself been a party to any fraud or illegality affecting it. Secs. 29, 30.

Under this sub-section it would appear that when the title to the bill is once purged of its infirmity by the bill passing into the hands of a holder in due course, it becomes immaterial whether any subsequent holder had notice or not of the prior defect or illegality. See also as to this *post* Sec. 30 (2).

30. (1). Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value. Presumption of value and good faith.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 30.*)

That is, of course, in an action against him. It is in effect the old rule that consideration is presumed in the case of negotiable instruments. This section could not be invoked by a plaintiff in favour of himself, when the onus of proving that he gave value lies upon him.[1] See next sub-section.

(2). And every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in an action on a bill, it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear, or illegality, the burden of proof (that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course.) On whom burden of proof lies.

The Imperial Act in this sub-section, omits the words in brackets and uses in lieu thereof, "is shifted unless and

[1] Smith *v.* Martin, 9 M. & W. 304.

Sec. 30. until the holder proves that subsequent to the alleged fraud or illegality value has in good faith been given for the bill."

This sub-section as originally framed began with the word "But" and the next sentences with the word "And." The amendments were made in the Senate. The writer submits that the sense, as well as the context, would have been improved if the sub-section had not been introduced by a conjunction at all. The words with which our Act concludes are more perspicuous than the corresponding ones in the English Act.

This was the law before the Act and it is therefore merely declaratory.[1] As soon as fraud or illegality is proved, which it is the duty of the judge to determine, it lies upon the holder to prove not only that he gave value but that he acquired title before maturity and had no notice and acted *bona fide*,[2] or that he derives title from a holder in due course. See Sec. 29 (3) and notes thereto. As to what is good faith, see *post* Sec. 89; as to who is a holder in due course, see Sec. 29 (1).

Usurious consideration.

(3). No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had at the time of its transfer to him actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract.

(Not in the Imperial Act.)

This was, at the passage of the Act, the Canadian Statute Law. See R. S. C. Cap. 123, Sec. 17.

There is now no restriction in Canada as to the rate of interest, R.S.C., Cap. 127, Sec. 1. Sections 9 - 30 inclusive

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[1] Smith *v.* Martin, *supra*; Bailey *v.* Bidwell, 13 M. & W. 73; Harvey *v.* Towers, 6 Exch. 656.

[2] Tatam *v.* Haslar, 23 Q.B.D. 345.

of that Act are repealed by 53 Vic., Cap. 34. Until the passage of the latter Act the law was as follows : in Ontario and Quebec, there was no restriction as to the rate of interest, except that certain corporations, other than Banks, could not charge more than six per cent., subject to certain exceptions. In Nova Scotia seven per cent. might be stipulated for, and in certain cases ten per cent. In New Brunswick six per cent. was the limit. See R.S.C., Cap. 127, Sec. 9 *et seq.* Sec. 30.

As to the effect of 53 Vic., Cap. 34, on bills and notes taken before the Act which would be usurious, see cases cited below.[1]

The rate of interest chargeable by banks is limited to seven per cent. by "The Bank Act," 53 Vic., Cap. 31, Sec. 80. There is no penalty, however, for charging a higher rate; but no more than seven per cent. is recoverable. *Ibid.*

Usury Laws were abolished by C.S.C. 1859, Cap. 58.[2] See also R.S.C., Cap. 127 as to this.

Although, since the repeal of the usury laws, the fact of taking a bill at a considerable undervalue, is not of itself sufficient to affect the title of the holder, it is an important element in considering whether he acted *bona fide*.[3]

(4). Every bill or note the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the words "given for

Consideration consisting of purchase money of patent right.

[1] Bank of Montreal *v.* Scott, 17 C.P. 358; Commercial Bank *v.* Cotton, 17 C.P. 214; in appeal, 447; Commercial Bank *v.* Harris, 26 U.C.R. 594.

[2] Quinlan *v.* Gordon, 20 Gr. *appendix* 1.

[3] Jones *v.* Gordon, 2 App. Cas. 616; Swaisland *v.* Davidson, 3 O.R. 320.

Sec. 30. a patent right;" (and without such words thereon such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration.)

(Not in Imperial Act:—R.S.C., Cap. 123, Sec. 12.)

The words in brackets were added in the Senate. Under this section as it stood before this amendment, it was held that the omission of the words "given for a patent right" did not avoid the note between the immediate parties to it.[1] Now, however, their omission will have that effect.

Liability of transferee.

(5). The indorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon, shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties.

(Not in Imperial Act—R.S.C. Cap. 123, Sec. 13.)

The word "defence" includes counter-claim, see Sec. 2 (*k*). This is one of the few instances in which the word occurs in the Act. Such defence by counter-claim would have to arise out of the transaction, out of which the bill or note originated.[2]

Penalty.

(6). Every one who issues, sells or transfers, by indorsement or delivery, any such instrument not having the words "given for a patent right" printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or

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[1] Girvin *v.* Burke, 19 O.R. 204.

[2] Holmes *v.* Kidd, 3 H. & N. 891, per Williams J., p. 893.

in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, is guilty of a misdemeanour, and liable to imprisonment for any term not exceeding one year, or to such fine, not exceeding two hundred dollars, as the court thinks fit. Secs. 30, 31.

(Not in Imperial Act—R.S.C. Cap. 123, Sec. 14.)

Sub-sections 4, 5 and 6 of this section were not in the original draft of the Act, but were added in Committee.

NEGOTIATION OF BILLS.

31. (1). A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. Negotiation of bills.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 31.*)

See "holder" defined Sec. 2 (*g*). A man, who has no interest in the bill, nor possession of it, but lends his name for the purpose of suing on it, is not the holder.[1] Where the plaintiff's name was used, without his knowledge or assent, his subsequent ratification of such use, was held sufficient.[2] Physical possession is not essential.[3]

(2). A bill payable to bearer is negotiated by delivery. To bearer.

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[1] Emmett *v.* Tottenham, 8 Exch. 884.

[2] Ancona *v.* Marks, 7 H. & N. 686; S. P., Howell *v.* McFarland, 2 A.R. 31; White *v.* McKay, 43 U.C.R. 226; Vanderlip *v.* Smith, 32 C.P. 60.

[3] Shepley *v.* Hurd, 3 A.R. 549; Small *v.* Riddell, 31 C.P. 373.

Sec. 31. See Sec. 2 for definition of "bearer" and "delivery."

To order.

(3). A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

See Sec. 2 (*h*), for definition of "indorsement"; and Sec. 32, *post*, as to what conditions must be complied with. An acceptance may be completed by delivery or *notification*, Sec. 2 (*a*). There is no similar provision as to indorsements.

A forged indorsement, apart from other provisions, would pass nothing, even under this section, as it is not by the holder. See Sec. 24.

Without indorsement.

(4). Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferrer had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferrer.

Until the bill is indorsed, the transferee is affected by any equities which attach to it in the hands of his transferrer,[1] nor is his defective title cured by the indorsement, if before he obtained it, he has received notice.[2] Until the indorsement, the legal title still vests in the transferrer, and the beneficial interest in the transferee.[3] He cannot at law sue the acceptor in his own name whatever his rights may be in equity.[4] "If by mistake, or accident, or fraud, a bill has been omitted to be indorsed upon a transfer, when it was intended that it should be, the party may be compelled

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[1] Whistler *v.* Forster, 14 C.B.N.S. 248.

[2] *Ibid.*

[3] Barton *v.* Gainer, 3 H. & N. 387; Purdham *v.* Murray, 9 A.R. 369.

[4] Harrop *v.* Fisher, 10 C.B.N.S. 196.

by a Court of Equity to make the indorsement; and, if he afterwards becomes bankrupt, that will not vary his right or duty to make it; and if he should die, his executor or administrator will be compellible in like manner to make it. The assignees of a bankrupt, under the like circumstances, may be compelled to make an indorsement of a bill transferred before his bankruptcy. But, in the case of an executor or administrator, or assignee of a bankrupt, the doctrine is to be understood with this limitation, that the indorsement cannot be insisted upon, except with the qualification that it shall not create any personal liability of the executor or administrator, or assignee, to pay the bill."[1] In such case the executor or administrator, or the assignee, as it might happen, could avail himself of the provisions of the next sub-section. Since the Judicature Act in Ontario, it is probable, the transferee might in one action ask for and obtain relief, both against the parties liable upon the bill and the transferrer, at the risk of having to pay the former their costs, unless they were acting in collusion with the transferrer, or unless for other good cause, the court, in its discretion, should see fit to withhold them. Sec. 31.

(5). Where any person is under obligation to indorse a bill in a representative capacity, he may indorse a bill in such terms as to negative personal liability. Personal liability may be avoided.

See Sec. 16 (1) and Sec. 26 for other provisions as to negativing liability. This section will probably be held not to apply to cases of agency at all, but exclusively to cases in which the person signing acts in a representative capacity, as executor, or fills an office, as where a bill is made payable to the order of the Treasurer of a Municipality. In such instances suitable words added after his signature, *e.g.*, "without personal liability," will be effectual to negative personal liability. This provision is to mitigate the rigour of the

[1] Story on Bills, Sec. 201.

Secs. 31, 32. principle laid down in Sec. 26, where persons are under obligation to indorse bills or notes in their representative capacity, and should, it is submitted, receive a most liberal construction in the courts.

Requisites of a valid indorsement.

32. (1). An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(*a*) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient;

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself;

(*b*) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill;

(*c*) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 32.*)

An "allonge" is a slip of paper attached to the bill, called in French an "*allonge*." It is not essential that there should be a physical impossibility of writing on the bill

itself, but it may be resorted to as the necessity or the convenience of the parties requires.[1] The allonge should be firmly affixed to the bill. Courts will be slow to admit indorsements on papers otherwise attached and easily removed from one bill to another. Some codes contain minute provisions upon the subject, to prevent frauds. Sec. 32.

As an indorsement must be of the entire bill; it follows that if a bill be payable by instalments, an indorsement of one or more only of the instalments will not operate as a negotiation of the bill *pro tanto.* It would however be authority to the holder to receive the specified sum, Sec. 27 (3).

As to the power of parties not *sui juris* to indorse, see Sec. 23 (2).

Where an indorser was insolvent, and his estate had vested in his assignee, it was held that his indorsement conferred no title.[2]

(2). Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding his proper signature; (or he may indorse by his own proper signature.) Misspelling.

The words in brackets are not in the Imperial Act. The usual practice is to require him first to indorse the bill as therein described, afterwards adding his proper signature. Now either mode alone will be proper, but doubtless, the practice of indorsing in both modes, will be found to be the most convenient and expedient.

Where the bill is payable to the order of a married woman thus, "Mrs. John Campbell," the proper mode of indorsement appears to be "Mary Campbell, wife of John Campbell."

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[1] Crosby *v.* Roub, 16 Wisconsin 616.

[2] Jenks *v.* Doran, 5 A.R. 558.

Sec. 32.

When an action on a note payable to "J. S. & Son" was brought in the name of "J. S. & Co.," it being clear that the plaintiffs were the persons designated as payees, they were held entitled to recover.[1]

Order of indorsement.

(3). Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

And their liability will be in that order. In the case of accommodation indorsers, it was formerly held in the courts of Ontario that they, like other co-sureties, were liable to mutual contribution;[2] but it is now finally established, that they are, in the absence of any agreement to the contrary, to be considered as having entered into a contract of suretyship, in the terms which the bill or note and the indorsements are known to create.[3] But this agreement is easily implied; as for instance, where the directors of an incorporated company agreed by resolution to raise money on an accommodation note, to be made by the company and indorsed by them, it was held that the order of liability was not to be ascertained by the position of their signatures on the note, but that they were, *inter se*, co-sureties.[4]

Special indorsement.

(4). An indorsement may be made in blank or special. It may also contain terms making it restrictive.

A restrictive indorsement is defined Sec. 35 (1).

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[1] Wallace *v.* Souther, 16 S.C.R. 717.

[2] Mitchell *v.* English, 17 Gr. 303; McKelvey *v.* Davis, *Ib.* 355; Cockburn *v.* Johnston, 15 Gr. 577; Clipperton *v.* Spettigue, 15 Gr. 269.

[3] Ianson *v.* Paxton, 23 C.P. 439.

[4] Macdonald *v.* Whitfield, 8 App. Cas. 733; see Fisken *v.* Meehan, 40 U.C.R. 146.

Secs. 33, 34.

33. Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid, whether the condition has been fulfilled or not.

Conditional indorsement.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 33.*)

This is an alteration of the law. Before this enactment the condition was binding on the acceptor and he was not discharged if he paid the bill before the condition was satisfied.[1] Observe that the word used in this section is "payer." "Payer" and "payee" being correlative terms, *payer* might be held to mean the party primarily liable to pay, and caution therefore is still required on the part of all others.

Indorsement in blank.

34. (1). An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer:

Special indorsement.

(2). A special indorsement specifies the person to whom, or to whose order, the bill is to be payable:

Application of Act to indorsee.

(3). The provisions of this Act relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 34.*)

As to these provisions, see sections 7 and 8. Some of these are, in brief, that he must be indicated with reasonable certainty; that the payees may be joint, or in the alternative; that the payee may be the holder of an office for the time being; that if fictitious or non-existing the bill may be treated as payable to bearer; and that it may be

[1] Robertson *v.* Kensington, 4 Taunt. 30.

Secs. 34, 35.

payable to order or bearer, and that the omission of these words does not restrain the negotiability.

Conversion of blank indorsement.

(4). Where a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to, or to the order of, himself or some other person.

This was the law before the Act,[1] and the almost universal practice of banks. A party primarily liable, other than the acceptor, paying a bill may strike out the restrictive indorsements.[2]

Restrictive indorsement.

35. (1). An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is indorsed "Pay D only," or "Pay D for the account of X," or "Pay D, or order, for collection."

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 35.*)

From the examples given in this sub-section, read in the light of section 34 (3) and section 8 (4), it is clear that the omission of the words "or order" after the indorsee's name does not make an indorsement restrictive.

Right of indorsee thereunder.

(2). A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser

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[1] Clark *v.* Piggott, 1 Salk. 126; Hirschfield *v.* Smith, L.R. 1 C.P. 340 at p. 353.

[2] Black *v.* Strickland, 3 O.R. 217; see also *post* Sec. 59 (2) (*b*).

could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorizes him to do so. Secs. 35, 36.

The restrictive indorsement is not a condition which can be disregarded by the payee, under Sec. 33, unless, it is submitted, it is only conditionally restrictive.

(3). Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement. If further transfer is authorized.

This might happen when the indorsement was in the form of the second or third examples given in the first sub-section, viz., "Pay D for the account of X," or "Pay D, or order, for collection." The subsequent indorsees are mere agents and not holders in due course, Sec. 29, and therefore any defence available against the first restrictive indorsee is available against them.

36. (1). Where a bill is negotiable in its origin, it continues to be negotiable until it has been (*a*) restrictively indorsed, or (*b*) discharged by payment or otherwise. When negotiable bills cease to be so.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 36.*)

Striking out the words "or order" after the payee's name does not restrict the negotiability.[1] A bill is only discharged by payment when made in due course by or on behalf of the drawee or acceptor, Sec. 59 (1). It is not discharged by payment by the drawer or indorser, *Ibid.* (2), unless he is a party accommodated, *Ibid.* (3).

[1] Decroix *v.* Meyer, 25 Q.B.D. 343.

Sec 36. It may be discharged otherwise than by payment; if the acceptor becomes the holder at or after maturity, Sec. 60; by a renunciation by the holder in writing, but this does not affect a holder in due course without notice thereof, Sec. 61; by intentional cancellation apparent on the bill, Sec. 62; by alteration, saving the rights of a holder in due course where it is not apparent, Sec. 63.

Negotiation of overdue bill.

(2). Where an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it.

Where there has been an agreement for a set off, such agreement will not be defeated by the transfer of the bill overdue.[1] It is *pro tanto* payment.[2]

See Sec. 29 (2), as to defects in title. It will be observed on reference thereto, that want of consideration is not one of the defects mentioned. The absence of consideration will not, in all probability, be deemed an equity attaching to an overdue bill. See Sec. 28 (2), which makes an accommodation party liable to a holder for value; value may be given at any time, Sec. 27 (2); and distinguish between a holder for value, and a holder in due course; the latter only, being defined as one who becomes the holder of a bill before its maturity,[3] Sec. 29.

When bill deemed overdue.

(3). A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the

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[1] Ching *v.* Jeffrey, 12 A.R. 432.

[2] Oulds *v.* Harrison, 10 Exch. 572.

[3] Charles *v.* Marsden, 1 Taunt. 224; Sturtevant *v.* Ford, 4 M. & Gr. 101; Cowan *v.* Doolittle, 46 U.C.R. 398.

face of it to have been in circulation for an unreasonable length of time; what is an unreasonable length of time for this purpose is a question of fact. Sec. 36.

This is a new provision. It is expressly limited to the purposes of this section, and will have no further or other operation than to fix the time when the holder, as the holder of an overdue bill, will be affected with defects of title, of which he had no notice. A different rule is laid down *post* Sec. 85 (3) with regard to notes payable on demand.

As hitherto, for the purposes of the Statute of Limitations, a bill payable on demand will be deemed due immediately and the time will run from its date against the acceptor.[1] The rule however would probably be different in the case of the drawer and indorsers. In the latter case, it is conceived, the Statute will not run from the date, but from the demand, by force of Sec. 47 (2).

(4). Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue. Presumption as to negotiation.

This was the law before the enactment.[2]

(5). Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this sub-section shall affect the rights of a holder in due course. Taking bill subsequent to dishonour.

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[1] Megginson *v.* Harper, 2 C. & M. 322; Norton *v.* Ellam, 2 M. & W. 461.

[2] Parkin *v.* Moore, 7 C. & P. 408; Roberts *v.* Bethell, 12 C.B. 778; Lewis *v.* Parker, 4 A. & E. 838.

Secs. 36, 37.

The dishonour spoken of will usually be for non-acceptance, in the case of a bill payable after date. This sub-section settles the law as laid down in decided cases.[1] If the indorsee has no notice of dishonour, he is not in the position of a holder who acquires an overdue bill.[2]

Negotiation of bill to party already liable thereon.

37. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 37.*)

If the acceptor becomes the holder at, or after maturity, the bill is discharged, *post* Sec. 60. Holders in due course will not be affected by this section unless they have notice that the bill has been re-issued, see Sec. 36. The possession of a bill, by the indorser after he has specially indorsed it, is *prima facie* evidence that he is the owner of it, and that it has been returned to him and taken up in due course upon its dishonour, although there be no re-indorsement, so that by the possession he is remitted to his original rights.[3]

"Subject to the provisions of this Act." See Sec. 36 (1).

Rights of the holder.

38. The rights and powers of the holder of a bill are as follows :—

(*a*) He may sue on the bill in his own name ;

(*b*) Where he is a holder in due course, he holds the bill free from any defect of title of

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[1] Crossley *v.* Ham, 13 East 498.
[2] O'Keefe *v.* Dunn, 6 Taunt. 305 ; S.C. 5 M. & S. 282.
[3] Black *v.* Strickland, 3 O.R. 217.

prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill: Sec. 38.

(*c*) Where his title is defective, (1) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (2) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 38.*)

As to what is payment in due course, see *post* Sec. 59 (1).

"There is at present no decided case that a person honestly paying a bill is in as good a situation as a party honestly discounting it."[1] "Payment before the bill or note is due or long after it is due, or in case of a cheque, long after it is drawn, are examples of payment out of the usual course of business."[2] "The question as to the validity of a payment usually arises between a customer and his banker, but a banker paying a bill made payable at his bank must exercise due caution."[3]

"There are some cases in which payment to a wrongful holder is protected, and others in which it is not. If a bill or note, payable to bearer, either originally made so, or become so by an indorsement in blank, be lost or stolen, a *bona fide* holder may compel payment. Not only is the payment to a *bona fide* holder protected, but payment to the

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[1] See however the observations of Best C. J. in Snow *v.* Peacock, 2 C. & P. 221; of Parke B., in Roberts *v.* Tucker, 16 Q.B. 560, at p. 575; and Ld. Cairns, in Smith *v.* Union Bank of London, 1 Q.B.D. 33, at p. 34.

[2] Beltz *v.* Molsons Bank, 40 U.C.R. 253.

[3] Vagliano *v.* Bank of England, 22 Q.B.D. 103; 23 Q.B.D. 243 C.A.; Beltz *v.* Molsons Bank, 40 U.C.R. 253; Roberts *v.* Tucker, 16 Q.B. 560; Agricultural Ins. Co. *v.* Federal Bank, 45 U.C.R. 214; S.C., 6 A.R. 192; Ryan *v.* Bank of Montreal, 14 A.R. 533.

Secs. 38, 39. thief or finder himself will discharge the maker or acceptor, provided such payment were not made with knowledge or suspicion of the infirmity of the holder's title, or under circumstances which might reasonably awaken the suspicions of a prudent man."[1]

"The loser should immediately give notice of the loss to the parties liable on the bill; for they will thereby be prevented from taking it up without due inquiry. Public advertisement of the loss should also be given; for if any person whosoever discounts it with notice of the loss, that will be such strong evidence of fraud that he can acquire no property in it. But public notice is of itself neither on the one hand sufficient nor on the other indispensable. To operate at all it must be brought home to the party to be affected by it."[2]

GENERAL DUTIES OF THE HOLDER.

When presentment for acceptance is necessary.

39. (1). Where a bill is payable (at sight or) after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 39.*)

The words in brackets are not in the Imperial Act. It is always a prudent course to present for acceptance a bill payable after date, but it is not incumbent on the holder to do so. This was the law before the Act.[3] "After sight" on a bill means after acceptance.[4]

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[1] Byles on Bills, p. 295.

[2] Byles on Bills, p. 394.

[3] Byles on Bills, 6 Am. Ed. p. 179; Walker *v.* Stetson, 19 Ohio 400.

[4] Campbell *v.* French, 6 T.R. 212.

Sec. 39.

(2). Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

Express stipulation as to presentment.

This latter provision applies to bills payable after date. Observe the expression is not payable at another place but "payable elsewhere than at the residence or place of business."

If drawn payable at a bank, or at the residence or place of business of a third person, it would have to be presented for acceptance, notwithstanding that the bank was in the same town with the residence or place of business of the drawee.

(3). In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

No presentment in any other case.

Bills payable after date need not be presented for acceptance. This sub-section is declaratory of the law as it was before the Act.[1]

(4). Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance

Necessary delay for presentment.

[1] Byles on Bills, 6 Am. Ed. p. 179.

Secs. 39, 40.

before presenting it for payment is excused, and does not discharge the drawer and indorsers.

This sub-section is new; and although designed chiefly to meet the case of foreign bills, it will be useful generally in the case of bills from a distance, or bills delayed in course of post, where the place of business or residence of the drawee, is either not in the same town or is considerably removed from the place where the bill is payable. It can only apply to bills payable after date, which must be presented for acceptance, if payable elsewhere than at the residence or place of business of the drawee. See *ante* sub-section (2).

Time for presenting bill payable after sight.

40. (1). Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time;

If not presented.

(2). If he does not do so, the drawer and all indorsers prior to that holder are discharged.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 40.*)

"Subject to the provisions," *i.e.*, where presentment for acceptance is excused. See Sec. 41 (2). Bills payable on demand must be presented for payment within a reasonable time, Sec. 45 (2) (*b*). The same rule applies to cheques, Sec. 73 (2).

There is no separate provision in our Act as to bills payable "at sight." Under the English Act they are demand bills. It is conceived that the provisions of this section would apply to them. Usually the context in our Act has been altered to meet the case of bills payable "at sight" by introducing the words "at sight or" before "after sight." See Sec. 14 (3), *Ibid* (4), Sec. 39 (1).

As to reasonable time.

(3). In determining what is a reasonable time within the meaning of this section, regard shall

be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. Secs. 40, 41.

Reasonable time is a question for a Court or jury, having regard to the nature of the bill, the usage of trade and the facts of the particular case. See similar provisions, Sec. 45 (2) and Sec. 85 (2). What is reasonable time, is a mixed question of law and of fact, and no definite rule can be laid down.[1] See also Sec. 36 (3) where "an unreasonable length of time" is made a question of fact.

41. (1). A bill is duly presented for acceptance which is presented in accordance with the following rules: Rules as to presentment for acceptance.

(*a*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 41.*)

"A reasonable hour." Banking hours are from 10 a.m. till 3 p.m., except on Saturdays, when banks usually close at 1 p.m. If the bill is not drawn on a bank, the holder is not limited to mere banking hours. Ordinary business hours are more extended.[2] As to what are business days, see Secs. 14 and 91. When the bill is presented the drawee may demand two days thereafter to deliberate whether he will accept or not, Sec. 42.

(*b*) Where a bill is addressed to two or more drawees, who are not partners, presentment must

[1] Tindal *v.* Brown 1 T.R. 168.

[2] Parker *v.* Gordon, 7 East 385; Wilkins *v.* Jadis, 2 B. & Ad. 188.

Sec. 41. be made to them all, unless one has authority to accept for all, when presentment may be made to him only.

An acceptance by only one, or some of them is a qualified one. See *ante* Sec. 19 (2) (*d*). If not authorized or subsequently assented to, it discharges the prior parties. See *post* Sec. 44 (2). If only accepted by one or some of the drawees, the holder may treat the bill as dishonoured by non-acceptance, see Sec. 44 (1).

(*c*) Where the drawee is dead, presentment may be made to his personal representative.

This sub-section is enabling only. When the personal representative is known, presentment may be made to him. If he is not known or if there is no personal representative, or if for any other reason, the holder chooses, he may avail himself of the option of sub-section 2 (*a*).

(*a*) Where authorized by agreement or usage, a presentment through the post-office is sufficient.

There is no such authorized usage, as far as the writer is aware, in Canada. See *post* Sec. 45 (7) which makes provision for presentment for payment *at* a post-office.

There is an additional sub-section in the Imperial Act providing for the case of the bankruptcy of the drawee.

Excuses for non-presentment.

(2). Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a*) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill;

(*b*) Where, after the exercise of reasonable diligence, such presentment cannot be effected;

(*c*) Where, although the presentment has been irregular, acceptance has been refused on some other ground. Secs. 41, 42.

The word "bankrupt" has been retained here, probably by inadvertence, in the transcript from the English Act. See also Sec. 51 (5), *post*, where it is likewise retained. As a rule the word has been scrupulously eliminated from the Act; notably in Sec. 2—the interpretation clause—where, in the English Act, "bankrupt," "includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy." There is no Insolvent Act in force in the Dominion. A bankrupt is usually one who has been adjudged insolvent or bankrupt under a Bankrupt Law.[1] Clause (*a*) would, however, probably be held applicable to Banks, Insurance Companies, Building Societies and Trading Corporations in liquidation under "The Winding-Up Act," R.S.C., Cap. 129.

(3). The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment. When there is no excuse.

This was the law before the passage of the Act.[2] See Sec. 46 (2) (*a*) as to presentment for payment and cases there cited.

42. When a bill is duly presented for acceptance and is not accepted (on the day of presentment or within two days thereafter), the person presenting it must treat it as dishonoured by non-acceptance; if he does not, the holder shall lose his right of recourse against the drawer and indorsers. Non-acceptance.

[1] Temple *v.* Toronto Stock Exchange, 8 O.R. 705, per Cameron C. J., at p. 731; B.N.A. Act, Sec. 91 (21); Clarkson *v.* Ontario Bank, 15 A.R. 166.

[2] In *re* Agra Bank, *Ex parte* Tondeur, L.R. 5 Eq. 160 p. 165.

Secs. 42, 43.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 42.*)

In the Imperial Act the words "within the customary time" are used instead of those contained in brackets and the same words were used in the original draft of our Act. As the bill passed the Commons, with the view to secure uniformity in the different provinces, these words in the Imperial Act were struck out, and "or on the next following day not being a legal holiday or non-juridical day," substituted for them. The Senate amended the section so as to read as it now stands. In the computation of time non-business days are to be excluded, Sec. 91. The holder will be justified in leaving the bill with the drawee for the period mentioned.[1] Should the bill be improperly detained, see Sec. 51 (8) as to mode of protest.

Dishonour by non-acceptance and its consequences.

43. (1). A bill is dishonoured by non-acceptance—

(*a*) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or—

(*b*) When presentment for acceptance is excused and the bill is not accepted.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 43.*)

See Sec. 41 (1) and (2), providing as to what is a due presentment for acceptance or excuse for non-presentment. The requisites of an acceptance are prescribed in the Act at Secs. 17, 18 and 19 *ante*.

Recourse in such case.

(2). Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer

[1] Byles on Bills, 209; Bank of Vandieman's Land *v.* Bank of Victoria, L.R. 3 P.C. 526 pp. 542, 543.

and indorsers accrues to the holder, and no presentment for payment is necessary. Secs. 43, 44.

The provisions referred to, are those contained in Secs. 64 *et seq.* relating to acceptance and payment for honour.

44. (1). The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance. As to qualified acceptances.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 44.*)

If he takes a qualified acceptance without the authority, express or implied, or subsequent assent of the drawer or an indorser, such drawer or indorser is discharged, see next sub-section.

(2). Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill; If taken without authority.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given; where a foreign bill has been accepted as to part, it must be protested as to the balance. Partial acceptance.

This sub-section is new.

Acceptances when qualified are—

(*a*) Conditional;
(*b*) Partial;
(*c*) Qualified as to time;
(*d*) Qualified as to parties.

See Sec. 19, *ante.*

Secs. 44, 45.

Partial acceptances are excepted from the rule. Where a partial acceptance is taken, notice should be given, but not notice of dishonour,[1] and in the case of a foreign bill there must also be a protest.

What shall be deemed assent.

(3). When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

Also new. In England, before the passage of 1 and 2 Geo. IV., Cap. 78 (the equivalent of R.S.C., Cap. 123, Sec. 16,) an acceptance payable at a particular place was a qualified acceptance. In such case it was the holder's duty to give notice to the drawer and any prior indorsers.[2]

Present-ment for payment.

45. (1). Subject to the provisions of this Act, a bill must be duly presented for payment; if it is not so presented, the drawer and indorsers shall be discharged.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 45.*)

"Subject to the provisions of this Act;" see Sec. 46.

This Act makes a radical change with regard to presentment for payment as we have already seen.[3] Formerly it was not necessary in Ontario to present a bill or note for payment, to charge the acceptor or maker, unless expressed to be made payable at a particular place "only, and not otherwise or elsewhere," R.S.C., Cap. 123, Sec. 16. See now, however, Sec. 19 as to bills, and Sec. 86 as to notes.

The English Act retained the provisions as to bills in Sec. 19, but abolished it in the case of notes. See Sec. 87

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[1] Bentinck *v.* Dorrien, 6 East 199.

[2] Rowe *v.* Young, 2 B. & B. 165, at pp. 174, 175.

[3] See Sec. 19, and notes thereto, at p. 30, *ante*.

of that Act. The section annotated is framed in harmony with the provisions of the English Act. It can scarcely be said to be so with ours. It implies that the only penalty for non-presentment is the discharge of the drawer and indorsers. By Secs. 52 (2) and 86 (1) of our Act there is the further penalty, that the plaintiff in an action against the acceptor or maker may be mulcted in costs, if it has not been so presented. Presentment for payment in Canada therefore for practical purposes may be said to be always necessary, unless in cases where it is excused under Sec. 46 (2). Sec. 45.

(2). A bill is duly presented for payment which is presented in accordance with the following rules:— Rules as to presentment.

(*a*) Where the bill is not payable on demand, presentment must be made on the day it falls due.

To bind the drawer or indorsers. Omission to do so on the day of maturity does not discharge the acceptor, Sec. 52 (2); nor the maker in the case of a note, Sec. 86 (1); unless in the case of the former there is an express stipulation to that effect either in the bill or the acceptance, Sec. 52 (2).

(*b*) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable;

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

By Sec. 10 bills overdue, when negotiated, are to be deemed payable on demand, and this provision would then seem to be

Sec. 45. applicable to them. As to when bills payable on demand are to be deemed overdue, see Sec. 36 (3). They are not deemed to be so merely because they bear date some time back.[1]

(*c*) Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place, as hereinafter defined, either to the person designated by the bill as payer (or to his representative) or some person authorized to pay or refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found.

After "behalf" in the second line in the Imperial Act the words "at a reasonable hour on a business day" are inserted. The words in brackets are not in that Act.

As a rule, presentment for payment is a merely local act; presentment for acceptance, a personal one to the acceptor, to enable him to exercise his discretion. Presentment should be within reasonable hours; at a bank before 3 p.m.,[2] except on Saturdays. Ordinary business hours are more extended.[3]

(*d*) A bill is presented at the proper place,—

(i.) Where a place of payment is specified in the bill (or acceptance) and the bill is there presented;

(ii.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;

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[1] Glasscock *v.* Balls, 24 Q.B.D. 13.
[2] Parker *v.* Gordon, 7 East 385. See Sec. 51 (6) (*b*).
[3] Wilkins *v.* Jadis 2 B. & Ad. 188.

(iii.) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known ; Sec. 45.

(iv.) In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last-known place of business or residence.

The words in brackets are not in the Imperial Act.

The effect of these rules is that a bill must be presented (1) at the place specified ; (2) if no place specified, at the address of the acceptor ; (3) if no address, (*a*) at his place of business if known, (*b*) if not, at his ordinary residence ; (4) if neither known, to the acceptor personally ; or at his last known place of business or residence. In any other case it would be excused, see Sec. 46 (2) (*a*). In the case of the acceptor's death, and no place of payment being specified, presentment is provided for in sub-section 5, see also sub-section 7, as to presentment at a post-office.

Section 39, *ante*, having provided when presentment for acceptance was necessary, section 41 provided the rules applicable to such presentment. This sub-section provides the rules as to presentment for payment. The first and second rules have obviously no place in the former ; the third, *mutatis mutandis*, is the counterpart of Sec. 41 (1) (*a*).

(3). Where a bill is presented at the proper place, and, after the exercise of reasonable diligence, no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

The place being ascertained in any one of the modes mentioned in the preceding sub-section, clause (*d*), this

Sec. 45. enacts that the absence of any person authorized to pay or refuse payment does not invalidate the presentment. The acceptor may be dead or moved away.[1] In the case of his death, and no place being specified, the bill must be presented to the personal representative, sub-section (5). Where a place is named which has ceased to exist, a bill would probably be considered payable generally.[2]

(4). Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

This is the equivalent of Sec. 41 (1) (*b*).

Presentment will be sufficient if made in any one of the modes laid down in sub-section (2) (*d*) *ante.*

(5). Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there is, and with the exercise of reasonable diligence he can be found.

Presentment for acceptance to a personal representative is optional. See Sec. 41 (1) (*c*). Presentment for payment by this sub-section is compulsory.

(6). Where authorized by agreement or usage, a presentment through the post-office is sufficient.

In England in a case[3] decided in 1864, Erle, C. J., and Byles, J., thought that sending a cheque by post to a banker might be a good presentment of a cheque. Subsequently,[4]

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[1] Buxton *v.* Jones, 1 M. & G. 83; Hine *v.* Alley, 4 B. & Ad. 624; Fitch *v.* Kelly, 44 U.C.R. 578.

[2] Beecher *v.* Corporation of Amherstburg, 23 C.P. 602.

[3] Bailey *v.* Bodenham, 16 C.B.N.S. 288.

[4] Prideaux *v.* Criddle, L.R. 4 Q.B. 455 at p. 461.

in 1869, Lush, J., was of opinion that a presentment through the post-office was a reasonable mode of presentment. It was finally decided[1] that in England it was a due mode of presentment according to the custom of bankers. Sec. 45.

The writer has been unable to learn whether there is any authorized custom or usage in Canada by which presentment can be made through the post-office. An agreement that it might be so presented could be made between the parties to a bill, in any particular case. *Modus et conventio vincunt legem.* The Act throughout seems to contemplate the practice of making presentment in that mode, see *ante* Sec. 41 (1) (*d*) and *post* Sec. 51 (6) (*a*); but it would probably not be held a proper mode in the absence of a recognized custom or usage, or agreement to that effect.

(7). Where the place of payment specified in the bill or acceptance is any city, town or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and, if there is no such place of business or residence the bill is presented at the post-office, or principal post-office in such city, town or village, such presentment is sufficient.

This sub-section is not in the Imperial Act. It removes a doubt. It was formerly a moot point where and how far such a bill should be presented. The practice heretofore was to present it at all the banking houses, and that was deemed sufficient.[2] The advantage of this provision is that presentment at all the banks in a large city is now no longer necessary, and in the smaller places where there is no bank there is now an authorized place where presentment may be made.

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[1] Heywood *v.* Pickering, L.R. 9 Q.B. 428.

[2] Hardy *v.* Woodruffe, 2 Stark 319.

Sec. 46.

Excuse for delay in presentment for payment.

46. (1). Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence: when the cause of delay ceases to operate, presentment must be made with reasonable diligence.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 46.*)

Nemo tenetur ad impossibile. Where the act of God, *e.g.* death or sudden illness, or accident in transit from causes uncontrollable by the holder, interfere or cause delay, he will be excused under this Act: and probably in some cases where the delay is occasioned by miscarriage in the post-office, see Sec. 49 (5). This sub-section, it should be observed, makes excuse for delay, but not for want of presentation altogether. Delay is excused by circumstances beyond the control of the holder; but presentment itself is only excused where it cannot be made as required by the Act in Sec. 45 (2) (*d*); or where the drawee is a fictitious person; and as regards the drawer, where the acceptor is not bound to pay the bill; and as regards an indorser, where it has been made for his accommodation, and he has no reason to expect that the bill would be paid if presented, or, where in any case presentment has been waived. See next sub-section.

When such presentment is dispensed with.

(2). Presentment for payment is dispensed with—

(*a*) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

"As required by this Act," see Sec. 45 (2) (*d*). The belief of the holder that the bill will be dishonoured is no excuse. This was the law before the Act.[1] Sec. 46.

(*b*) Where the drawee is a fictitious person:

This could only apply where presentment for acceptance is unnecessary, see Sec. 39. It is not necessary to present a bill for payment which has been dishonoured by non-acceptance, Sec. 48 (*b*). See Schedule I., form D., for form of protest to be used in cases where the holder sees fit to adopt such a course, and the bill is again dishonoured and has been previously only noted for non acceptance.

(*c*) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

This was always the law,[2] but presentment would still be necessary to charge the indorser.[3]

(*d*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

This was likewise the former law. The obvious reason is, that should the drawee or acceptor pay the bill, the indorser would at once become indebted to him in the amount of it.[4] Presentment would still be necessary to charge other indorsers.[5] Notice of dishonour is similarly

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[1] Bowes *v.* Howe, 5 Taunt. 30; Esdaile *v.* Sowerby, 11 East 114. See Conn *v.* Merchants' Bank, 30 C.P. 380.

[2] Terry *v.* Parker, 6 A. & E. 502; Wirth *v.* Austin, L.R. 10 C.P. 689.

[3] Saul *v.* Jones, 1 E. & E. 59.

[4] Terry *v.* Parker, *supra* per Ld. Denman, C. J., p. 506.

[5] Turner *v.* Sanson, 2 Q.B.D. 23.

Secs. 46, 47, 48.

dispensed with in cases falling under the last four rules; see *post*, Sec. 50 (2).

(*e*) By waiver of presentment, express or implied.

Dishonour by non-payment.

Waiver of presentment does not dispense with notice of dishonour.

47. (1). A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 47.*)

Presentment is duly made, when the bill is presented on the day it falls due, by the holder, or on his behalf, at the proper place to the payer, or his representative, or some person duly authorized to pay or refuse payment on his behalf, Sec. 45 (2). As to excuses for presentment, see Sec. 46 (2).

Recourse in such case.

(2). Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer, acceptor and indorsers accrues to the holder.

The provisions referred to are Secs. 64 to 67, relating to acceptance and payment for honour.

Notice of dishonour and effect of non-notice.

48. (1) Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

(*a*) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission. Sec. 48.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 48.*)

See the provisions referred to in Sec. 50. The effect of this sub-section, clause (*a*), is, that when a bill has been dishonoured by non-acceptance and notice of dishonour is not given, a person who becomes holder of it before its maturity, etc., as in Sec. 29, is not prejudiced by the omission.

There would be no difficulty in deciding when bills payable after date were overdue. Demand bills are deemed overdue when in circulation an unreasonable length of time, Sec. 36 (3). A similar rule applies to bills payable after sight, Sec. 40, and would probably be held to do so in the case of bills payable at sight; there is none, however, laid down in the Act. At all events, if the bill had been in circulation an unreasonable length of time, it would be a circumstance from which evidence of the want of *bona fides* required by Sec. 29 might be inferred.[1]

(*b*) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

This section requires notice to be given to each indorser. By Sec. 56 *post*, every person who becomes a party to the bill other than the drawee or acceptor, incurs the liability of an indorser.

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[1] Muilman *v.* D'Eguino, 2 H. Bl. 565; Mellish *v.* Rawdon, 9 Bing., 416.

Secs. 48, 49.

Before this Act a guarantor was not entitled to notice.[1] A guarantee must be in writing[2]: if on the note, and it did not vary the ordinary contract of suretyship which an indorser undertakers, Sec. 55 (2) (*a*), *quære*, whether he would not be entitled to notice of dishonour, by force of Sec. 56. Apart from this, a guarantor under certain circumstances, as to custom, etc., has been held entitled to expect due presentment and notice.[3] It is always a very wise precaution to give a guarantor some timely notice.

Rules as to notice of dishonour.

49. (1). Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules:—

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 49.*)

(*a*) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

As notice to the acceptor is not necessary, nor protest, Sec. 52 (3), therefore, no provision is made for the drawer's giving notice.

(*b*) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice, whether that party is his principal or not.

Even the drawee or acceptor may be an agent of the holder for the purpose of giving this notice.[4] But he must have been authorized by the holder to do so.[5]

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[1] Hitchcock *v.* Humphrey, 5 M. & G. 559; Walton *v.* Mascall, 13 M. & W. 452; Ryan *v.* McConnell, 18 O.R. 409.

[2] Wambold *v.* Foote, 2 A.R. 579.

[3] *Ex parte* Bishop, 15 Ch. D. 400.

[4] Shaw *v.* Croft, Chit. 9. Ed. 494; Rosher *v.* Kieran, 4 Camp. 87.

[5] Stanton *v.* Blossom, 14 Mass. 116.

Sec. 49.

(*c*) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given;

(*d*) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

An indorser entitled to give notice is one who is himself, at the time, liable upon the bill, sub-section (*a*) *ante*.

In this country, where inland bills are usually protested for non acceptance or non-payment, it is the custom to give notice to all prior parties. It is submitted, that it is not incumbent on the holder to do so. He might arbitrarily select any one or more of them against whom he intends to rely. If this view is correct, the assumption, that notice has been given to all of them, is made at the risk of any intermediate party, who in turn wishes to have recourse against parties prior to himself who are entitled to notice.[1] His safest course, in all cases, would be to give the notice required by this section, see sub-section (1) (*e*). He might transmit the notice he himself has received.[2] It is sufficient to send it by post, sub-section (4). It will lie upon him to prove that the letter containing the notice was duly addressed and posted,[3] with the necessary postage prepaid, sub-section (4). Branches of the same bank in different towns are, for the purposes of receiving notice, distinct.[4]

(*e*) The notice may be given in writing or by

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[1] Miers *v.* Brown, 11 M. & W. 372.

[2] Jamieson *v.* Swinton, 2 Taunt. 224.

[3] Hawkes *v.* Salter, 4 Bing. 715.

[4] Steinhoff *v.* Merchants' Bank, 46 U.C R. 25; Prince *v.* Oriental Bank Company, 3 App. Cas. 325.

Sec. 49. personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment.

The notice may be given in any terms, but it always was, and still is, under this Act, vital that it should inform the party to whom it is addressed, either in express terms or by necessary implication, that the bill has been dishonoured.[1]

(*f*) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

This is a new provision and will only be of avail to banks holding paper for collection. When a bill is held for value it will not be returned without payment or its equivalent: in the meantime, it might be necessary to give notice in the usual way.

(*g*) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication; a misdescription of the bill shall not vitiate the notice, unless the party to whom the notice is given is in fact misled thereby.

A notice contained a mistake as to the date of maturity: it was held that the notice was sufficient, as it did not appear that the indorser was misled.[2]

(*h*) Where notice of dishonour is required to be given to any person, it may be given either

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[1] Solarte *v.* Palmer, 7 Bing. 530, affirmed in the House of Lords, 1 Bing. N.C. 194.

[2] Cassidy *v.* Mansfield, 24 C.P. 383. See also Mellersh *v.* Rippen 7 Exch. 578; Smith *v.* Whiting, 12 Mass. 6.

to the party himself, or to his agent in that behalf; Sec. 49.

(*i*) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there is, and, with the exercise of reasonable diligence, he can be found.

A notice addressed to the deceased in the usual way is not invalid, if the party giving it, does not know of his death; see *post* sub-section (4). Before the Act it was held that notice sent to an indorser in ignorance of his death was sufficient.[1]

(*j*) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others;

(*k*) The notice may be given as soon as the bill is dishonoured, and must be given (not later than the next following juridical or business day).

The words in brackets are not in the Imperial Act; but the words, "within a reasonable time thereafter," are used in lieu thereof. That Act also contains provisions as to what is reasonable time; and also a clause as to the case of the bankruptcy of the drawer or an indorser.

(2). Where a bill, when dishonoured, is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal; if he gives notice

If dishonoured bill is in hands of an agent.

[1] Cosgrave *v.* Boyle, 6 S.C.R. 165.

Sec. 49.

to his principal, he must do so within the same time as if he were the holder, and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder:

Notice to antecedent parties.

(3). Where a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

See notes to sub-section (1) (*d*). If the notice was received on Sunday or other non-business day, Sec. 91, the party receiving notice would be entitled to an additional day, sub-section (1) (*k*).[1]

When notice shall be given.

(4). Notice of the protest or dishonour of any bill payable in Canada shall, notwithstanding anything in this section contained, be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence or at the place at which such bill is dated, unless any such party has, under his signature, designated another place; and in such latter case such notice shall be sufficiently given if addressed to him in due time at such other place; and such notice so addressed shall be sufficient, although the place of residence of such party is other than either of such above-mentioned places; and such notice shall be deemed to have been duly served and

[1] Wright *v.* Shawcross, cited 2 B. & Ald., at p. 501.

given for all purposes if it is deposited in any post-office, with the postage paid thereon, at any time during the day on which such protest or presentment has been made, or on the next following juridical or business day; such notice shall not be invalid by reason of the fact that the party to whom it is addressed is dead. Sec. 49.

(Not in the Imperial Act—taken in part from R.S C.,Cap. 123, Secs. 5 and 23.)

"Has under his signature designated another place," taken from R.S.C., Cap. 123, Sec. 5; formerly, 37 Vic., Cap. 47, Sec. 1. The place designated may be written by a person other than the party to such bill;[1] and it remains his address even although the party has changed his place of residence.[2] Ignorance of the party's residence will excuse, so long as that ignorance continues without any negligence.[3] If the notice miscarry through the indistinctness of the party's handwriting he will not be discharged.[4]

"Deposited in any post-office with the postage paid thereon." This is an alteration in the law; R.S.C., Cap. 123, Sec. 23, taken from C.S.U.C., Cap. 42, Sec. 16, provided that the notice be deposited in the "post-office nearest to the place of making presentment," and contained no stipulation that the postage should be prepaid.

"Such notice shall not be invalid by reason of the fact that the party to whom it is addressed is dead." This settles by statutory enactment the law as laid down in the much contested case of Cosgrave *v.* Boyle.[5] There the appellants discounted a note made by P. and indorsed by S., in the

[1] Hay *v.* Burke, 16 A.R. 463.
[2] Hay *v.* Burke, *supra.*
[3] Baldwin *v.* Richardson, 1 B. & C. 245.
[4] Baillie *v.* Dickson, 46 U.C.R. 167; S.C., 7 A.R. 759.
[5] 6 S.C.R., 165; see also Merchants' Bank *v.* Bell, 29 Gr. 413.

Sec. 49. Canadian Bank of Commerce. S. died leaving the respondent his executor, who proved the will before the note matured. The note fell due on the 8th May, 1879, and was protested for non payment, and the bank being unaware of the death of S., addressed notice of protest to S. at Toronto, where the note was dated, under 37 Vic., Cap. 47, Sec. 1. (Dom.) The appellants, who knew of the death of S. before maturity of the note, subsequently took up the note from the bank, and relying upon the notice of dishonour given by the bank sued the respondent. Held, reversing the judgment of the Court of Appeal for Ontario, that the holders of the note sued upon when it matured, not knowing of S.'s death, and having sent him a notice in pursuance of Sec. 1, Cap. 47, 37 Vic., gave a good and sufficient notice to bind the respondent, and that the notice so given enured to the benefit of the appellants. Had the appellants acted in accordance with the suggestion made in the notes to sub-section (1) (*d*), *ante*, there would have been no difficulty. If the drawer or indorser is dead and that fact is known to the party giving the notice, he is bound to send it to the personal representatives, if they are likewise known or may with reasonable diligence be found, sub-section (1) (*i*): if he does not know of the death, a notice addressed merely to the deceased is sufficient, and will enure to the benefit of any subsequent party.[1]

Miscarriage in post service.

(5). Where a notice of dishonour is duly addressed and posted, as above provided, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post-office.

"As above provided," *i.e.* in the previous sub-section (4). It lies on the sender to prove that the letter enclosing the notice was duly addressed and posted.[2] A protest is sufficient *prima facie* evidence of those facts, Sec. 93 (5). If the

[1] Cosgrave *v.* Boyle, *supra.*

[2] Hawkes *v.* Salter, 4 Bing. 715.

party liable was to swear that he had not received it, it would still be necessary to prove, *aliunde*, that the letter was duly addressed and posted.[1] Secs. 49, 50.

50. (1). Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence; when the cause of delay ceases to operate the notice must be given with reasonable diligence. Excuses for non-notice delay.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 50.*)

As to the circumstances which would excuse delay, see notes to Sec. 46, *ante.*

In some cases a person who is not a party to a bill, but who is liable for the consideration for which it is given, is entitled to notice of dishonour,[2] and delay in giving such notice, unless excused under this section, would be fatal.

(2). Notice of dishonour is dispensed with— When notice is dispensed with.

(*a*) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged.

"Notice as required by this Act," see Sec. 49.

(*b*) By waiver express or implied: notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice.

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[1] Merchants' Bank *v.* McDougall, 30 C P. 236.

[2] Conn *v.* Merchants' Bank, 30 C.P. 380; Anderson *v.* Beck, 16 East 248; Hopkins *v.* Ware, L.R. 4 Exch. 268.

Sec. 50.

Waiver would be implied, *e.g.*, if the person bound, whether drawer or indorser, before the maturity, knowing the inability of the acceptor, asks an extension and in consideration thereof promises to pay ;[1] or if there be a subsequent promise to pay, or admission of liability ;[2] or a part payment ;[3] even after action brought.[4] But it must be made with a full knowledge of the facts,[5] and not merely under a misapprehension of the law. As to express waiver at the time of becoming a party to the bill, see Sec. 16 (2).

(*c*) As regards the drawer, in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment.

This is in addition to the cases laid down in rules in clauses (*a*) and (*b*). Presentment for payment is dispensed with under Sec. 46 (2) (*c*), as regards the drawer, in only two of the cases laid down in this rule.

(*d*) As regards the indorser, in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill, (2) where the

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[1] Phipson *v.* Kelner, 4 Camp. 285.

[2] Cordery *v.* Colville, 32 L.J., C.P. 210.

[3] Horford *v.* Wilson, 1 Taunt. 12.

[4] Hopley *v.* Dufresne, 15 East 275.

[5] Goodall *v.* Dolley, 1 T.R. 712 ; Westloh *v.* Brown, 43 U.C.R. 402.

indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation. Secs. 50, 51.

Presentment for payment is dispensed with as regards the indorser, where the drawee is a fictitious person irrespective of his knowledge of this fact. Both in this and the preceding rule notice of dishonour is dispensed with in several cases, where presentment for payment is necessary, see Sec. 46 (2).

51. (1). Where an inland bill has been dishoured it may, if the holder thinks fit, be noted (and protested) for non-acceptance or non-payment, as the case may be; but, (subject to the provisions of this Act with respect to notice of dishonour,) it shall not, (except in the Province of Quebec), be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser; (but in the case of a bill drawn upon any person in the Province of Quebec, or payable or accepted at any place therein, in default of protest for non-acceptance or non-payment, as the case may be, and of notice thereof, the parties liable on the bill other than the acceptor are discharged, subject, nevertheless, to the exceptions in this section hereinafter contained). Noting or protest of bill.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 51.*)

The words in brackets are not in the Imperial Act.

The word "noted" means notarial noting, which is completed by protest.

This sub-section does not conflict with the provisions contained in Sec. 48, that if an inland bill is dishonoured,

Sec. 51. notice must be given to the drawer and indorsers to preserve the remedies against them, but merely dispenses with the formality of a protest, except in the Province of Quebec, and allows notice to be given in any other way provided for in Sec. 49.

Neither notice nor protest is necessary to render the acceptor liable, Sec. 52 (3).

Protest of foreign bill.

(2). Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour, (except as in this section provided,) is unnecessary.

New—The words in brackets are not in the Imperial Act. For the definition of foreign bills, see Sec. 4, *ante*. Sec. 88 (4) enacts that protest of a foreign note is unnecessary, except for the preservation of the liabilities of indorsers.

Subsequent protest.

(3). A bill which has been protested for non-acceptance, (or a bill of which protest for non-acceptance has been waived,) may be subsequently protested for non-payment.

The words in brackets are not in the Imperial Act.

It might be advisable in the case of foreign bills to protest them for non-payment subsequent to a protest for

non-acceptance, in order to comply with the law of the country where the bill was drawn or indorsed. Sec. 51.

(4). Subject to the provisions of this Act, when a bill is * protested (the protest must be made or) noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. Time for noting.

*"*noted or*" in the Imperial Act.

The words in brackets are not in the Imperial Act, but in lieu thereof "it must be."

"Subject to the provisions"; namely, those contained in sub-section (6) (*a*), where a bill has been presented through the post-office, and in sub-section (9), excusing delay in some cases.

This sub-section is somewhat confused. Its evident meaning is, that where a bill is dishonoured and protested, it must be so protested on the day of its dishonour, or it may be merely noted on that day, and the protest subsequently extended as of the day of the noting, see Sec. 92.

(5). Where the acceptor of a bill becomes bankrupt* or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. If acceptor is insolvent.

* "*or insolvent*" in the Imperial Act.

This is not a new provision.[1] Its only utility will be that the bill may then be accepted for honour, see Sec. 64. Without the intervention of a protest there cannot be two acceptances on the same bill; see Sec. 6 (2).[2]

[1] Byles on Bills, 6 Am. Ed. 258.

[2] Jackson *v.* Hudson, 2 Camp. 447.

Sec. 51.
Where bill must be protested.

(6). A bill must be protested at the place where it is dishonoured, (or at some other place in Canada situate within five miles of the place of presentment and dishonour of such bill).

The words in brackets are not in the Imperial Act, and were inserted to facilitate protests and prevent hardships likely to occur in country districts.

Provided that :

(*a*) When a bill is presented through the post-office, and returned by post dishonoured, it may be protested at the place to which it is returned, (not later than on the day of its return or the next juridical day).

As to presentation through a post-office, see *ante*, Sec. 45 (6). The Imperial Act omits the words in brackets and concludes "and on the day of its return, if received during business hours, and if not received during business hours, then not later than the next business day." The clause in question was amended in the Senate.

(*b*) Every protest for dishonour, either for non-acceptance or non-payment, may be made on the day of such dishonour at any time after non-acceptance, or in case of non-payment, at any time after three o'clock in the afternoon.

The Imperial Act here contains a clause providing that when a bill is protested for non-payment after it has been dishonoured for non-acceptance, such protest shall be made at the place where payable. This clause (*b*) is reproduced from C.S.C., Cap. 123, Sec. 22, and is not contained in the Imperial Act. It makes no change in the law. Although banks generally close on Saturdays at one o'clock, a protest

for non-payment of a bill domiciled at a bank made before three o'clock would be irregular. Sec. 51.

A right of action accrues as soon as a bill is dishonoured by non-acceptance, Sec. 43 (2); or by non-payment, Sec. 47. In Edgar *v.* Magee[1] it was contended that, where a bill had been dishonoured by non-payment, an action might begin at any time after three o'clock in the afternoon, even on the day of maturity. Although not necessary for the decision of the case, the leaning of the Court seems to have been favourable to that contention.

Qu. whether it would not be held otherwise now, that by Sec. 14 (3) the time of payment is determined by including the day of payment. Full effect might still be given to the clause under consideration, by limiting its effect to ascertaining the hour when a protest may be first made. The law does not ordinarily notice the fraction of a day.[2]

What protest shall set forth.

(7). A protest must contain a copy of the bill, (or the original bill may be annexed thereto), and (the protest) must be signed by the notary making it, and must specify—

(*a*) The person at whose request the bill is protested;

(*b*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

The words in brackets are not in the Imperial Act.

It will be observed that a protest need not be under seal. The practice of sealing would still be prudent in the case of foreign bills.

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[1] 1 O.R. 287. See also Sinclair *v.* Robson, 16 U.C.R. 211; Warne *v.* Lawrence, W.N. (1886) 55.

[2] Clarke *v.* Bradlaugh, L.R. 72 B.D. 151, and in App. 82 B.D. 63.

Sec. 51.

If bill is lost, etc.

(8). Where a bill is lost or destroyed, or is wrongly (or accidentally) detained from the person entitled to hold it, (or is accidentally retained in a place other than where payable), protest may be made on a copy or written particulars thereof.

The words in brackets are not in the Imperial Act.

The copy or particulars would have to be made up from the best records preserved. There are no degrees of secondary evidence;[1] but a party giving secondary evidence must give all its terms.[2] Merchants' bill books should contain all the data from which to make the copy of the bill or the written particulars of it.

Excuses for non-protest and delay.

(9). Protest is dispensed with by any circumstances which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

See Sec. 46 and notes thereto, as to excuses for delay in presentment for payment; and Sec. 50, as to excuses for non-notice and delay.

Officer of bank not to act as notary.

(10). No clerk, teller or agent of any bank shall act as a notary in the protesting of any

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[1] Taylor on Evidence, 6 Ed. p. 510.

[2] Ross *v.* Williamson, 14 O.R. 184. See Sugden *v.* Lord St. Leonards, 1 P.D. 154; where on an application for probate the contents of a lost will, of a very lengthy and complicated character, were allowed to be proved by the evidence of a single witness from memory.

bill or note payable at the bank or at any of the branches of the bank in which he is employed. Secs. 51, 52.

(*R.S.C., Cap. 123, Sec. 11.*)

52. (1). When (no place of payment is specified in the bill or acceptance), presentment for payment is not necessary in order to render the acceptor liable. Liability of acceptor as to presentment.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 52.*)

The words in brackets are not in the Imperial Act, but in lieu thereof, "a bill is accepted generally."

To charge the drawer or indorsers it would still be necessary to present the bill, Sec. 45, subject to the provisions of Sec. 46. See also Secs. 48 and 50. As to mode of presentment of a bill where no place is specified, see Sec. 45 (2) (*d*) sub-clause 3.

(2). When a place of payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures, but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the Court.

See Secs. 19 and 45, *ante*, and notes thereto. This subsection is very much changed from the corresponding one in the Imperial Act.

It has been held that the omission to present at a bank, a debenture made payable there, was fatal to an

Sec. 52. action brought upon it.[1] Under this enactment presentment, in the absence of an express stipulation to that effect, is not a condition precedent, but the holder proceeds to an action at the peril of costs. The omission might affect the holder's right to interest.[2] Making a bill payable at a bank by its customer is authority to the former to apply its customer's funds in payment of the bill.[3] If in such a case the customer could show he was damnified by the omission to present the bill on the day of its maturity, he would probably be discharged.[4] See Sec. 73 (*a*).

No protest or notice necessary.

(3). In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him.

The same provision would apply in the case of the maker of a note, Sec. 88 (2); even though there should be joint makers and one a surety.[5]

Present-ment for payment.

(4). Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Payment operates as a discharge of the bill, if made in due course by the drawee or acceptor, Sec. 59; if made by any other person he gets a valid discharge for the bill, Sec. 38 (*c*).

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[1] Montreal City Bank *v.* Corporation of Perth, 32 C.P. 18. *Sed vide aliter*, Fellows *v.* Ottawa Gas Company, 19 C.P. 174.

[2] Mackintosh *v.* Haydon, R. & M. 362.

[3] Nightingale *v.* City Bank of Montreal, 26 C.P. 74; Hill *v.* Royds, L.R. 8 Eq. 289.

[4] Alexander *v.* Burchfield, 7 M. & Gr. 1061.

[5] Wilson *v.* Brown, 17 Can. Law Jour. 121.

LIABILITIES OF PARTIES.

Funds in hands of drawer.

53. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 53.*)

This was the law prior to the passing of the Act.[1] A cheque is not an equitable assignment.[2] An order to pay money out of a particular fund is not a bill of exchange, Sec. 3 (3). It may then operate as an equitable assignment and is binding on the person to whom it is addressed, after notice, even before acceptance.[3]

The holder of a cheque has no remedy against the bank, if it is dishonoured, although there are funds.[4]

Liability of acceptor.

54. The acceptor of a bill, by accepting it—

(*a*) Engages that he will pay it according to the tenor of his acceptance;

(*b*) Is precluded from denying to a holder in due course—

(1). The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill.

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[1] Lamb *v.* Sutherland, 37 U.C.R. 143; Hall *v.* Prittie, 17 A.R. 306.

[2] Caldwell *v.* Merchants' Bank, 26 C.P. 294; Hopkinson *v.* Forster, L.R. 19 Eq. 74.

[3] Hall *v.* Prittie, *supra*, p. 308; Shand *v.* Du Buisson, L.R. 18 Eq. 283.

[4] Schroeder *v.* Central Bank, 34 L.T.N.S. 735.

Sec. 54. (*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 54.*)

This was always the law. He was held to be estopped from adducing evidence that the signature was forged in an action against him,[1] or that it was unauthorized.[2] There is another estoppel which is matter of evidence, see Sec. 24, *ante.*

(2). In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement.

The indorsement might, in fact, not be made until after acceptance, in which case it would be a great hardship if he were precluded from denying the genuineness of the signature. It was formerly thought that if the acceptance was made afterwards, it admitted the indorsement as well as the drawing.[3] In a recent case,[4] in 1880, the rule was adhered to because the name of the indorsee was blank, when the bill was accepted. This sub-section settles the law as laid down in the Court of Appeal for Ontario,[5] where it was decided, not, however, without much hesitation, that the acceptor is not precluded, although the indorsement is made before the acceptance. It would make a difference if it could be shown that he knew it was forged at the time of acceptance.[6]

(3). In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

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[1] London and South Western Bank *v.* Wentworth, 5 Exch. D. 96.

[2] Bank of Montreal *v.* De Latre, 5 U.C.R. 362.

[3] Roberts *v.* Tucker, 16 Q.B. 560, at p. 575; Ashpitle *v.* Bryan, 3 B. & S. 474, at p. 489.

[4] London and South Western Bank *v.* Wentworth, 5 Exch. D. 96.

[5] Ryan *v.* Bank of Montreal, 14 A.R. 533.

[6] Beeman *v.* Duck, 11 M. & W. 251.

If the payee is a fictitious person the holder may treat it as a bill payable to bearer, see Sec. 7 (3), *ante*. But the fictitious selection of an existing person is not within the rule.[1] The maker of a note given to an insolvent, whose estate was then vested in an assignee, was not permitted to deny the insolvent's capacity to indorse.[2] Secs. 54, 55.

55. (1). The drawer of a bill, by drawing it— Liability of drawer.

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 55.*)

This section defines the liability of the drawer; it is, however, subject to the provision of Sec. 16, by which he may restrict his liability; but the drawing must itself be unconditional, Sec. 3.

The proceedings requisite to be taken, if the bill is dishonoured, are laid down in Sec. 43, in case of non-acceptance; and in Sec. 47, if dishonoured by non-payment.

In case a bill is drawn by a party incompetent to contract, it is enforceable at the instance of the holder, against any other party to it, but the drawer incurs no liability, Sec. 22 (2).

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

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[1] Vagliano *v.* Bank of England, 22 Q.B.D. 103; S.C., 23 Q.B.D. 243, C.A.

[2] Perkins *v.* Beckett, 29 C.P. 395.

Sec. 55. If the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer, Sec. 7 (3).

Liability of indorser.

(2). The indorser of a bill, by indorsing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken.

"Engages," *i.e.*, unless he has availed himself of the provision of Sec. 16, *ante*.

The indorser of a bill is in effect a new drawer.[1]

(*b*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements.

This is declaratory of the law as it was before the Act.[2]

(*c*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his indorsement, a valid and subsisting bill, and that he had then a good title thereto.

Formerly the indorser, as well as all prior parties, was discharged, if the bill was altered in a material particular;[3]

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[1] Penny *v.* Innes, 1 C.M. & R. 439.

[2] Merchants' Bank *v.* U.E. Club, 44 U.C.R. 468; Halifax *v.* Lyle, 3 Exch. 446; Ashpitle *v.* Bryan, 3 B. & S. 474; S.C. 5 B. & S. 723, Exch. Cham.

[3] Burchfield *v.* Moore, 3 E. & B. 683; Westloh *v.* Brown, 43 U.C.R. 402.

but this rule is modified by Sec. 63, if the alteration is not apparent, and the bill is in the hands of a holder in due course. Secs. 55, 56.

56. Where a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course, (and is subject to all the provisions of this Act respecting indorsers). Stranger signing bill liable as indorser.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 56.*)

The words in brackets are not in the Imperial Act. They were added in the Senate.

"The provisions of this Act," see Sec. 55 (2).

An Indorsement in general is a transfer in writing by the holder of the bill to a new holder, on whom the property in it is thereby conferred. By the custom of merchants, as modified by English law, there may also be an indorsement by a person who neither is and never has been a holder of the bill, but who puts his name on it to facilitate its transfer. By the old foreign law, not in this respect hitherto entirely adopted by the English law, this might be done by what was called "an aval" (said to be an antiquated word signifying "underwriting"),[1] either on the bill itself or on a separate paper; and if such an aval was given by any one, his obligation to all subsequent holders of the bill was precisely the same as that of the person to facilitate whose transfer the aval was given.[2] This section seems to make provision for such an indorsement. It creates no obligation to those who were previously parties to the bill; it is solely for the benefit of those who take subsequently.

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[1] Steele *v.* McKinlay, 5 App. Cas. 754, per Ld. Blackburn, at p. 772.

[2] *Ibid.*

Secs. 56, 57

A difficulty sometimes arises where a bill or note is made payable to A. B. or order, and is first indorsed for the accommodation of the maker by a third person. It was held by the Supreme Court of the United States in 1877, in the case of a note, that such third person was to be deemed a maker or guarantor;[1] but the current of our authorities is opposed to this.[2] As somewhat in point might be mentioned a case in England,[3] where the son of the defendant bought goods from the plaintiffs and required credit to enable him to pay. It was agreed that the defendant should become surety for the price of the goods. The plaintiffs drew two bills of exchange and indorsed them to the defendant, who re-indorsed them to the plaintiffs. The bills having been dishonoured at maturity, it was held that the plaintiffs were not precluded from suing the defendant, on the ground of circuity of action, and that they could recover the amount of the bills from the defendant.[4]

A guarantor may, in some circumstances, be entitled to notice of dishonour.[5]

Measure of damages against parties to dishonoured bill.

57. Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages, shall be as follows :—

(*a*) The holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the

[1] Good *v.* Martin, 95 U.S. (5 Otto) 95 ; see also Jones *v.* Goodwin, 39 Cal. 493 ; S.C. 2 Am. R. 475 ; Penny *v.* Innes, 1 C. M. & R. 439.

[2] See Steer *v.* Adams, 6 O.S. 60 ; Moffat *v.* Rees, 15 U.C.R. 522 ; Davies *v.* Funston, 45, U.C R. 369 ; and cases cited in Robinson & Joseph's Digest, pp. 524, 526.

[3] Wilkinson *v.* Unwin, 7 Q.B.D. 636 ; see also Macdonald *v.* Whitfield, 8 App. Cas. 733, 748.

[4] See also Wordsworth *v.* McDougall, 8 C.P. 403.

[5] *Ex parte* Bishop, 15 Ch. D. 400.

acceptor or from the drawer, or from a prior indorser. Sec. 57.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 57.*)

Provided such parties sought to be made liable, other than the acceptor, have received notice, Sec. 48; except in cases where notice is dispensed with in accordance with the provisions of Sec. 50.

(1). The amount of the bill.

As to the mode of ascertaining this, when the bill is expressed to be payable in the currency of a foreign country, see Sec. 9 and notes and Sec. 71 (2) (*d*). If the bill is drawn payable with interest, the latter, computed to maturity, is part of the amount of such bill; so is the exchange, Sec. 9, *ante.*

(2). Interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case.

This clause only provides for the case of interest after maturity. If the bill is required to be paid with interest, it becomes payable as part of the sum for which the bill is drawn, Sec. 9[1], and is provided for in the previous clause. Where the rate is higher than legal interest, there is no implied contract to pay such higher rate after maturity.[2]

The claim for interest after maturity is a claim for damages for breach of contract, not as upon an implied contract, and

[1]Crouse *v.* Park, 3 U.C.R. 458; Hudson *v.* Fawcett, 7 M. & G., 348.

[2]Dalby *v.* Humphrey, 37 U.C.R. 514; Cook *v.* Fowler, L.R. 7 H.L. 29.

Sec. 57. is in the discretion of a court or jury. *Prima facie*, the rate agreed upon is the rate to be allowed.[1] But it becomes a matter of contract if the bill or note contains such words as "with interest at the rate of, etc., until paid, or until fully paid."[2]

Prior to this Act an indorser was not liable to pay interest thereon as a debt unless the bill or note was protested.[3]

Legal interest in Canada is six per cent., R.S.C., Cap. 127, Sec. 2.

(3). The expenses of noting and protest.

The Imperial Act has, after "noting," the words "or when protest is necessary, and the protest has been extended, the expenses of protest." That Act makes no provision for the protest of inland bills or notes.

The damages provided for in this section may be the subject of a special indorsement upon a writ,[4] but the expenses of protest are not necessarily so.[5]

(*b*) In the case of a bill which has been dishonoured abroad, (in addition to) the above damages, the holder may recover from the drawer or any indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

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[1] Powell *v.* Peck, 15 A.R. 138; Simonton *v.* Graham, 8 P.R. 495.

[2] St. Johns *v.* Rykert, 4 A.R. 213; S.C., 10 S.C.R. 278; Powell *v.* Peck, *supra*; Grant *v.* People's Loan and Deposit Company, 17 A.R. 85.

[3] Re McDougall, 12 A.R. 265. See R.S.C., Cap. 123, Sec. 21.

[4] *Ex parte* Robarts, *re* Gillespie, 16 Q.B.D. 702.

[5] Sinclair *v.* Chisholm, 5 P.R. 270.

The Imperial Act does not contain the words in brackets, but "in lieu of." Sec. 57.

The "re-exchange" meant by this sub-section is merely the amount of our currency which is represented by the bill in the case of a foreign bill. Suppose, for instance, that a bill is dishonoured in England, drawn here payable in pounds sterling, the person suing here upon such a bill may recover the amount of the re-exchange, that is, the amount of our currency represented by the pounds at the time when the bill was due.[1]

In England it has been held that, notwithstanding this section, it is still the law, as laid down in Walker *v.* Hamilton,[2] and in *re* General South American Company,[3] that the drawer of a bill of exchange in a foreign country, accepted in England, is entitled, upon the bill being dishonoured and protested, to recover from the acceptor not only the amount of the bill with interest, but also all such reasonable expenses as may have been caused by the dishonour, including the expenses of re-exchange.[4] Much stress was laid in that case upon the provisions of Sec. 97 (2) of the Imperial Act.[5] If the same question was raised here, some difficulty might arise from its omission in our Act.

The provision of R.S.C., Cap. 123, Sec. 6, limiting the damages on bills drawn on persons out of Canada or the Island of Newfoundland to two and one-half per cent., is not continued by this Act. The damages there provided for, it is submitted, are not in the nature of the re-exchange meant in this sub-section;[6] and if recoverable at all, are henceforth not liquidated as, perhaps, they were under that Act.

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[1] *Ex parte* Robarts, *re* Gillespie, *supra*, at p. 705.
[2] 1 D.F. & J. 602.
[3] 7 Ch. D. 637.
[4] *Ex parte* Robarts, *re* Gillespie, 16 Q.B.D. 703.
[5] See p. 4 *ante*.
[6] *Ex parte* Robarts, *re* Gillespie, 16 Q.B.D. 703, at p. 705.

Secs. 57, 58.

Formerly, at law, an acceptor was not liable for re-exchange;[1] but he was held so liable in equity.[2] The drawer, on the other hand, was liable even before the Act.[3]

Transferrer by delivery.

58. (1). Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferrer by delivery:"

Liability.

(2). A transferrer by delivery is not liable on the instrument:

Warranty.

(3). A transferrer by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

If a bill is given on account of a pre-existing debt, the transferrer is liable on the consideration for which it is given if it is dishonoured;[4] he would also be liable if he deposited bills to his credit in a bank, and they turned out to be worthless.[5] But in either of such cases, the transferee must not be guilty of laches,[6] and the transferrer is entitled to due notice of dishonour.[7]

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[1] Napier *v.* Schneider, 12 East 420.

[2] *In re* General South American Co., 7 Ch. Div. 637.

[3] Mellish *v.* Simeon, 2 H. Bl. 378.

[4] Ward *v.* Evans, 2 Ld. Raym. 928; Rogers *v.* Langford, 1 C. & M. 637; Van Wart *v.* Woolley, 3 B. & C. 439.

[5] Timmins *v.* Gibbins, 18 Q.B. 722; Conn *v.* Merchants' Bank, 30 C.P. 380.

[6] Camidge *v.* Allenby, 6 B. & C. 373.

[7] Rogers *v.* Langford, *supra*; Conn *v.* Merchants' Bank, *supra*.

DISCHARGE OF BILL.

59. (1). A bill is discharged by payment in due course by or on behalf of the drawee or acceptor. Discharge by payment.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective. Payment in due course.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 59.*)

As to what is a valid payment, see Sec. 38 (*c*) and notes.

A bill is not discharged by payment by any of the subsequent parties. Hence, where the holder has received payment from the drawee, the better opinion is that he may still sue and recover the amount from the acceptor.[1]

(2). Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser, it is not discharged; but— Payment by drawer or indorser; its effect.

(*a*) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;

(*b*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or

[1] Jones *v.* Broadhurst, 9 C.B. 173; Johnson *v.* Keenan, 2 Wils. 262; Andrews *v.* Bank of Toronto, 15 O.R. 648.

Sec. 59. antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

Payment by a third party at the request of a party to the bill, is payment by the party requesting, and a discharge of the liability of indorsers not liable to him.[1]

Accommodation bill. (3). Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

There is an implied undertaking on the part of the person accommodated, that he will provide funds for the payment of the bill at maturity, and that if the accommodation party pays it, he will reimburse him.[2] See Sec. 28 as to the definition of an accommodation party.

Sec. 60 in the original draft of the Act was copied from the Imperial Act and read as follows: "When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority." It was, however, so strenuously opposed in Committee that it was allowed to drop. Great hardships are imposed on banks under the present law.[3] The proviso to Sec. 24, of our Act[4] somewhat modifies its rigour in their favour; see

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[1] Ianson *v.* Paxton, 22 C.P. 505; reversed on appeal, 23 C.P. 439, but not as to this. See Black *v.* Strickland, 3 O.R. 217.

[2] Reynolds *v.* Doyle, 1 M. & G. 753.

[3] See Agricultural Investment Co. *v.* Federal Bank, 45 U.C.R. 214; affirmed on appeal, 6 A.R. 192.

[4] See *ante* p. 38.

also the provisions of Sec. 79 as to the payment of crossed cheques. It will be observed the provisions of the omitted section only apply to bills payable on demand. The law in England is therefore the same as ours with regard to bills not payable on demand.[1] It must not be forgotten, however, that under the Imperial Act a bill, which is expressed to be payable at sight, is payable on demand, see notes to Sec. 10, *ante*. Secs. 59, 60, 61.

60. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged. Acceptor the holder at maturity.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 61.*)

This is a new provision.

If the holder appointed the acceptor his executor and died, the acceptor was discharged before this Act,[2] although a contrary rule prevailed in equity.[3] But under this section it is very doubtful whether he would be discharged, since the provision requires that he becomes the holder "in his own right."

If the acceptor becomes the holder before maturity, he may re issue the bill, Sec. 37.

61. (1). When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged: the renunciation must be in writing, unless the bill is delivered up to the acceptor. Express waiver.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 62.*)

New. Before this Act, a bill could only be discharged *before it was payable*, by parol and without satisfaction.[4] The

[1] Vagliano *v.* Bank of England, 23 Q.B.D. 243.
[2] Freakley *v.* Fox, 9 B. & C. 130.
[3] Ingle *v.* Richards, 28 Beav. 366; Strong *v.* Bird, L.R. 18 Eq. 315.
[4] Foster *v.* Dawber, 6 Exch. 839, and see per Parke B, at p. 852.

Secs. 61, 62.

effect of this sub-section is, it seems, to dispense with the need of consideration in any case. A renunciation in writing is good without delivery of the bill. If the bill is delivered up, the renunciation need not be in writing.

The renunciation must be complete; a mere memorandum or note of an intention or desire to renounce would not be sufficient. Therefore a written direction by the holder of a note, payable on demand, that it be destroyed as soon as found, given on his death-bed, at a time when it could not be found, is not a renunciation.[1] In the last case it was doubted whether the renunciation can be signed by an agent,[2] but the attention of the Court was not directed to Sec. 90 (1) *post.*

If the renunciation is conditional, it would probably not be sufficient after the maturity of the note, without consideration to support it. At common law a contract could not be discharged, after breach, by accord without satisfaction.

The same.

(2). The liabilities of any party to a bill may in like manner be renounced by the holder before, at or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of renunciation.

As a delivery would be inapplicable in this case, the words "in like manner" must be understood to refer to a renunciation in writing only. Any indorser who would have had a right of recourse against the party, whose liability is thus discharged, would be likewise discharged.[3] It is noticeable that Sec. 63 (2) makes this provision in the case of cancellation, whilst this sub-section omits to do so.

Cancellation of bill.

62. (1). Where a bill is intentionally cancelled by the holder or his agent, and the

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[1] *In re* George, Francis *v.* Bruce, 44 Ch. D. 627.

[2] *Ibid*, at p. 632.

[3] Chalmers on Bills p. 199, *Illustration No.* 2 and authorities here cited.

cancellation is apparent thereon, the bill is discharged : Secs. 62, 63.

(2). In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case, any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged : Of any signature.

(3). A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative ; but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. Erroneous cancellation.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 63.*)

The mere fact of cancelling the signature of the makers of a dishonoured note, and writing paid on it, corrected before the note is sent back by a memorandum thereon "cancelled in error" is not effectual to charge a bank with the receipt of the money.[1]

63. (1). Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers: Alteration of bill.

[1] Prince *v.* Oriental Bank Corporation, 3 App. Cas. 325 ; Warwick *v.* Rogers, 5 M. & G. 340.

Sec. 63.
Proviso.

Provided, that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(Imperial Act 45 and 46 Vic., Cap. 61, Sec. 64.)

The proviso is new. It intrenches on the principle that honest acquisition confers no title when made through a forgery.[1] Before the Act, when the makers handed the defendant a printed form of a promissory note, with all the blanks filled in, and complete in every respect, except that it had not been signed by the intended makers, and defendant indorsed it for their accommodation, and handed it back to them, when they, without defendant's knowledge, added after the words "value received," "with interest at 10 per cent. per annum," then signed it, and transferred it for value to plaintiff without notice of the alteration; held defendant was discharged;[2] and where the payee of a note tore off a memorandum in the margin, restricting the negotiability of the note, it was held the maker was discharged, as against a holder for value without notice.[3] When a promissory note had been avoided by an alteration made by the maker, a subsequent promise by the indorser to pay it, without knowledge of the alteration, was held insufficient.[4]

What are material alterations.

(2). In particular, the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted

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[1] Jenks *v.* Doran, 5 A.R. 558.
Icrow *v.* Kelly, 28 C.P. 551.
[3] Swaisland *v* Davidson, 3 O.R. 320.
[4] Westloh *v.* Brown, 43 U.C.R. 402

generally, the addition of a place of payment without the acceptor's assent. Sec. 63.

A note had been altered by adding a place of payment, and the words "with interest, etc." It was held valid notwithstanding, as it conformed to the original intention of the parties, and likewise because the indorser had subsequently assented to it.[1]

The following were held material alterations before the Act: changing the place of payment;[2] adding another maker's name to a several note;[3] changing the date from 1873 to 1874 of a cheque.[4] Changing the date might not be deemed a material alteration if it were to correct a mere clerical error.[5] Insertion of the date, when omitted accidentally, was held not a material alteration in a hire receipt;[6] nor the filling in of a payee's name in a debenture.[7] As to such alterations as these, however, see now the provisions contained in Sec. 20 (1), *ante*. The insertion of the words, "this note to be held as collateral security" was held to vitiate the instrument as a material alteration.[8] Where a person signs a bill induced by a fraudulent misrepresentation as to its character, he is not liable even to an innocent holder,[9] unless he has been guilty of negligence, and not even then, unless the negligence is the proximate cause of its being taken.[10]

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[1] Fitch *v.* Kelly, 44 U.C.R. 578.

[2] McQueen *v.* McIntyre, 30 C.P. 426.

[3] Reid *v.* Humphrey, 6 A.R. 403.

[4] Beltz *v.* Molsons Bank, 40 U.C.R. 253.

[5] See Sayles *v.* Brown, 28 Gr. 10; Somerville *v.* Rae, 28 Gr. 618

[6] Mason *v.* Bickle, 2 A.R. 291.

[7] Bank of Toronto *v.* Cobourg, 7 O.R. 1.

[8] Hall *v.* Merrick, 40 U.C.R. 566.

[9] Foster *v.* Mackinnon, L.R. 4 C.P. 704.

[10] Queen *v.* Chesley, 16 S C.R. 306, the case of a Bond; Swan *v.* North British Australasian Company, 7 H. & N. 603; 2 H. & C. 175. As to negligence, see the cases of Young *v.* Grote, 4 Bing. 253; Arnold *v.* The Cheque Bank, 1 C.P.D. 578.

Sec. 63.

SATISFACTION, EXTINGUISHMENT, SUSPENSION AND RELEASE.

The preceding title or division of the Act, embracing Secs. 59-63, treats of the absolute discharge of the bill. In addition to a discharge, as provided for in those sections, the liability upon a bill may be satisfied, extinguished, suspended or released.

SATISFACTION.—A bill may be satisfied by the receipt of a smaller sum than the amount due upon it, if paid by a third person with that intent.[1] Payment of a smaller sum by the party himself is not satisfaction,[2] but the acceptance of a negotiable security for a smaller sum may be,[3] and in Ontario since the Judicature Act, R.S.O. 1887, Cap. 44, Sec. 53 (7), the common law rule, as laid down in Foakes *v.* Beer and other cases cited therewith, has been changed: so that part performance of an obligation, either before or after breach, when expressly accepted in satisfaction, extinguishes it; but *quære* in the case of a bill or note whether such satisfaction would not require to be evidenced in writing, see Sec. 61 (1), unless it was delivered up.[4]

Taking security from one of several parties, the joint makers of a note or acceptors of a bill, will in general discharge the others.[5]

EXTINGUISHMENT.—Judgment recovered on the bill or note is an extinguishment of the original debt between the plaintiff and the defendant, but it does not otherwise restrain

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[1] Welby *v.* Drake, 1 C. & P. 557; Cooper *v.* Parker, 15 C.B. 822.

[2] Pinnel's Case, 5 Rep. 117 *a*; Foakes *v.* Beer, 9 App. Cas. 605; Fitch *v.* Sutton, 5 East 230; see also Cumber *v.* Wane, 1 Stra. 426; Sibree *v.* Tripp, 15 M. & W. 23; Smith's Leading Cases, 7 Am. Ed. p. 439.

[3] Sibree *v.* Tripp, *supra.*

[4] See Bank of Commerce v. Jenkins, 16 O.R. 215.

[5] Evans *v.* Drummond, 4 Esp. 89; Thompson *v.* Percival, 5 B. & Ad. 925; Reed *v.* White, 5 Esp. 122; but see Carruthers *v.* Ardagh, 20 Gr. 579, per Eq. Spragge V.C., at p. 580.

Sec. 63.

its negotiability, nor interfere with the rights of other parties to it.[1] So also a judgment against one or more, jointly liable upon the bill, is an extinguishment of the liability of the others,[2] subject to the exception in Ontario, created by the Judicature Act, R.S.O. 1887, Cap. 44, Con. Rule No. 706; but without satisfaction it is no extinguishment as between the plaintiff and other parties not jointly liable upon it, whether prior or subsequent to the defendant.[3]

Taking security of a higher nature operates as an extinguishment or merger of the remedies on the bill; but the remedies must be strictly co-extensive.[4] It has no effect on other distinct parties;[5] and the liability of the party giving it, remains unaffected if taken as collateral security merely.[6] A note which had not been paid, or returned to the maker, and current at the time of the indorsement, is good in the hands of a *bona fide* indorsee for value without notice, notwithstanding that his indorser, by realizing a collateral security, had paid himself the note.[7]

SUSPENSION.—Taking another bill in renewal is a suspension.[8] The delivery of a renewal bill for or on account of the whole or part of it, suspends right of action, while such security is running and not due.[9] But the bill taken in renewal must be negotiable to have that effect.[10] If the renewal bill is unpaid, unless it is outstanding in the hands

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[1] Woodward *v.* Pell, L.R. 4 Q.B. 55.

[2] King *v.* Hoare, 13 M. & W. 494.

[3] Claxton *v.* Swift, 2 Show. 441, 494.

[4] Currie *v.* Hodgins, 42 U.C.R. 601.

[5] Ansell *v.* Baker, 15 Q.B. 20.

[6] Bedford *v.* Deakin, 2 B. & Ald. 210.

[7] Glasscock *v.* Balls, 24 Q.B.D. 13.

[8] Kearslake *v.* Morgan, 5 T.R. 513; 2 Wms. Saunders, 106 E.; Steadman *v.* Gooch, 1 Esp. 3.

[9] Thompson *v.* Wilson, 1 C.P. 57; Belshaw *v.* Bush, 11 C.B. 191; Price *v.* Price, 16 M. & W. 232; Shanly *v.* Midland Railway Company, 33 U.C.R. 604.

[10] James *v.* Williams, 13 M. & W. 828.

Sec. 63. of a transferee,[1] the original debt revives.[2] It is not payment *quoad* third parties.[3] If the renewal bill be discharged by an alteration, an action may be brought on the first.[4] A bill taken as collateral security does not suspend the right of action.[5]

RELEASE.—A release under seal requires no consideration to support it. If given by one of several joint creditors, or to one of several jointly liable upon a bill or note, it is a release to all.[6] But a covenant not to sue one of two joint debtors does not operate as a release of the other.[7]

The relationship between the acceptor of a bill or the maker of a note, and the other parties liable thereupon respectively, is *prima facie* that of principal and surety; similarly the drawer of a bill is as to the first indorser a principal and such indorser, a surety; and each indorser is in turn a principal and the subsequent indorser a surety. The same principle applies in the case of a note. Evidence, however, is admissible to show the real relationship.[8] Such inquiry, in general, has only become material in the case of accommodation paper; but *quære* whether the law will not be altered in this respect by force of Sec. 28 (2).

Any act which discharges the principal debtor, thereby discharges the sureties,[9] unless the holder expressly reserves his rights against them,[10] since in that case, though exonerated

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[1] Price *v.* Price, *supra*.

[2] Canadian Bank of Commerce *v.* Woodward, 8 A.R. 347; Healey *v.* Dobson, 8 O.R. 691; Sayer *v.* Wagstaff, 5 Beav. 423; Maillard *v.* Duke of Argyle, 6 Scott N.R. 938; London Birmingham and South Staffordshire Bank, Limited, In *re*, 34 L.J. Ch. 418.

[3] Blackley *v.* Kenny, 19 O.R. 169; Carruthers *v.* Ardagh, 20 Gr. 579.

[4] Sloman *v.* Cox, 1 C.M. & R 471.

[5] Molsons Bank *v.* McDonald, 40 U.C.R. 529; affirmed, 2 A.R. 102.

[6] Cheetham *v.* Ward, 1 B. & P. 630; Nicholson *v.* Revill, 4 Ad. & E. 675.

[7] Hutton *v.* Eyre, 6 Taunt. 289; Price *v.* Barker, 4 E. & B. 760.

[8] Ewin *v.* Lancaster, 6 B. & S. 571, 577; Oriental Financial Corporation *v.* Gurney, L.R. 7 Ch. App. 142; affirmed, 7 H.L. 348.

[9] Oriental Financial Corporation *v.* Gurney, *supra*.

[10] Muir *v.* Crawford, 2 H.L., Sc. 456.

by the holder, the principal debtor continues liable to the claims of the sureties.[1] Giving time to the principal releases the surety, as by taking a renewal bill for the debt,[2] or for the interest;[3] but, *semble*, accepting payments of interest which have accrued due on an overdue bill or note, since its maturity, does not discharge the indorsers.[4] Sec. 63.

It makes no difference, if the relationship of principal and surety is created after the debt accrued, if the holder has notice,[5] but now as to accommodation bills, see Sec. 28 (2).

When a mortgage was taken as collateral security at a longer date, it was held not to release the sureties.[6] Giving time to one of three executors of an estate, for a debt of which he was the principal debtor and the testator had been surety, was held not to release the estate.[7]

Any negligence on the part of the holder prejudicial to the surety discharges him, *pro tanto*.[8] If collateral security is held, the holder is bound to use due diligence in realizing and protecting the same. Failure to do so discharges the debt, *pro tanto*.[9]

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[1] Muir *v.* Crawford, *supra*.

[2] Gould *v.* Robson, 8 East 576; Blackley *v.* Kenny, 19 O.R. 169.

[3] Darling *v.* McLean, 20 U.C.R. 372.

[4] Wilson *v.* Brown, 6 A.R. 411, 413.

[5] Bailey *v.* Griffith, 40 U.C.R. 418.

[6] Molsons Bank *v.* McDonald, 40 U.C.R. 529, affirmed 2 A.R. 102.

[7] Austin *v.* Gibson, 28 C.P. 554.

[8] Molsons Bank *v.* Girdlestone, 44 U.C.R. 54; Canadian Bank of Commerce *v.* Green, 45 U.C.R. 81.

[9] Synod of Toronto *v.* DeBlaquiere, 27 Gr. 536; Merchants' Bank *v.* McKay, 12 O.R. 498; S.C. in Appeal, 15 S.C.R. 672; Ryan *v.* McConnell, 18 O.R. 409; Blackley *v.* Kenny, 19 O.R. 169.

Sec. 64.

ACCEPTANCE AND PAYMENT FOR HONOUR.

Acceptance for honour *supra* protest.

64. (1). Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 65.*)

It is sufficient if the bill has been merely noted, Sec. 92. A holder is not bound to take an acceptance for honour, as he may prefer to avail himself of the provisions of Sec. 43 (2). The drawee, not being a person already liable, might, it seems, accept a bill for honour, except in the case where it has been protested for better security. The advantage of his doing so would be, that then the drawer, as to him, is a principal debtor on the bill, and he is but a surety, Sec. 67 (5), unless he has accepted it for the honour of a subsequent party. A bill accepted for honour must be presented for payment and protested before the acceptor is liable, Sec. 66 (1), and this is an exception to the rule laid down in Sec. 43 (2).

In part.

(2). A bill may be accepted for honour for part only of the sum for which it is drawn.

As to the effect of partial acceptances, see Sec. 44 (2). If the acceptance for honour was otherwise qualified, the other provisions laid down in Sec. 44 (2) would apply.

(3). An acceptance for honour *supra* protest, in order to be valid, must— Sec. 64. Requirements for validity.

(*a*) Be written on the bill, and indicate that it is an acceptance for honour;

(*b*) Be signed by the acceptor for honour.

An ordinary acceptance to be valid must be written on the bill and be signed by the drawee; or the mere signature is sufficient without additional words, Sec. 17 (2) (*a*). The signature alone in the case of an acceptance for honour is insufficient; "accepted *supra* protest" or "accepted S.P." are sufficient modes of accepting for honour, but the full form is "accepted *supra* protest for the honour of A." Before the Act, it was the practice for an acceptance for honour to be attested by a notarial "Act of honour" recording the transaction;[1] but this practice, it is thought, is no longer essential.

(4). Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer; For whose honour.

(5). Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of (protesting) for non-acceptance, and not from the date of the acceptance for honour. Computation of time.

The word in brackets is not in the Imperial Act, but instead thereof, "the noting."

Should the short mode of accepting for honour mentioned *ante* sub-section 3 be used, it follows from sub-section 4 that the acceptance is deemed for the honour of the drawer. The omission of the date is not material, as in sight bills the

[1] Chalmers on Bills, 210; Mitchell *v.* Baring, 10 B. & C. 4.

Secs. 64, 65, 66.

time begins to run from the date of noting or protest, and not from the date of the acceptance for honour, and see Sec. 14 (4). Before this Act it was held that the time was to be calculated from the date of acceptance for honour.[1]

Liability of acceptor for honour.

65. (1). The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts:

To what parties.

(2). The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 66.*)

Sec. 45, *ante*, provides for the mode of presentment for payment to the drawee; and Sec. 49, for the mode of giving notice. The reason that the bill must be presented for payment to the drawee is, that by the arrival of funds, his position may be changed and that he may then be willing to satisfy the bill.[2] See Sec. 54, *ante*, as to the undertaking of an acceptor. An acceptor for honour is bound by the same estoppels.[3]

Presentment to acceptor for honour.

66. (1). Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

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[1] Williams *v.* Germaine, 7 B. & C. 468.
[2] Hoare *v.* Cazenove, 16 East 391.
[3] Phillips *v.* Im Thurm, L.R. 1 C.P. 463.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 67.*) Sec. 66.

By virtue of Sec. 92, it is sufficient if the bill has been merely noted. The formal protest may be drawn up at any time, even after action brought.[1] See Sec. 15 as to the referee in case of need.

Time for presentment.

(2). Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

It would be competent for the acceptor for honour, under our Act, to name a place of payment in his acceptance, Sec. 19 (2); and presentment there would be sufficient, Sec. 45 (*d*). The consequence of delay in making presentment, as required by this sub-section, would probably be held to be fatal, and to release not only the acceptor for honour, but also all parties who would have been discharged by his payment. There is at present no decision, however, as to this.

Excuses for non-presentment or delay.

(3). Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

As to the circumstances which excuse delay or non-presentment, see Sec. 46.

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[1] Geralopulo *v.* Wieler, 10 C.B. 690.

Secs. 66, 67.

Protest for non-payment.

(4). When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him.

And thus there might be three protests. *Quære* whether the expenses of the protest provided for in this sub-section are recoverable against parties antecedently liable upon the bill, under Sec. 57 (*a*): as in no case is the holder bound to take an acceptance for honour.[1] See however, Sec. 93 (2).

Payment for honour *supra* protest.

67. (1). Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 68.*)

The preceding sections provide for acceptance for honour and the proceedings consequent thereon. This section provides for payment for honour and will apply in cases, either where acceptance is unnecessary, under Sec. 39 (3); or where a bill having been duly accepted is dishonoured by non-payment. There is no restriction in this section as in Sec. 64 (1), *ante*, so that no person is precluded by its terms from intervening as a payer for honour, whether a party or not, although there would be, in general, a manifest incongruity in the former doing so. The provision of Sec. 92 applies, and it is not necessary if the bill has been noted that the protest should be extended before the payment for honour.

If more than one offer to pay.

(2). Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference:

[1] Mulford *v.* Walcott, 12 Mod. 410.

(3). Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it: Sec. 67. Attestation.

(4). The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays. Basis hereof.

If not accompanied by a notarial act, it will be a mere voluntary payment, and the payer will be an indorsee of an overdue or dishonoured bill, to which all defects of title attach.[1]

(5). Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays, and all parties liable to that party. Liabilities and rights in such case.

The effect of this, it is submitted, is to place the payer for honour, as far as regards the party for whose honour he pays and for all parties liable to that party, in the position of a surety who has paid a debt for his principal. It is likewise submitted that this sub-section applies to an acceptor for honour paying the bill, and even should it be held that in terms it does not do so it is conceived the same principles

[1] Mertens *v.* Winnington, 1 Esp. 113.

Sec. 67. apply.[1] The acceptor for honour, when the bill has been protested for better security, has his remedy also against the acceptor.[2]

Delivery to payer for honour.

(6). The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest. If the holder does not on demand deliver them up, he shall be liable to the payer for honour in damages.

After payment for honour and delivery of the bill to the payer the bill ceases to be negotiable.[3]

Effect of refusal to receive payment.

(7). Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

It would appear that promissory notes may be and sometimes are paid *supra* protest. The language of this section would seem to apply to them as well as to bills, and see Sec. 88 (1) and (3).

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[1] Byles on Bills, p. 276.
[2] *Ex parte* Wackerbath, 5 Ves. 574.
[3] *Ex parte* Swan, L.R. 6 Eq. 344.

LOST INSTRUMENTS.

68. (1). Where a bill has been lost before it is overdue, the person who was holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to idemnify him against all persons whatever in case the bill alleged to have been lost shall be found again: Holder's right to duplicate of lost bill.

(2). If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so. If refused.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 69.*)

This section probably introduces a change in the law in Ontario and throughout Canada. There was no similar provision in the repealed Act, R.S.C., Cap. 123. It is transcribed from the Imperial Act and reproduces the effect of 9 and 10, William III., Cap. 17, Sec. 3 (Imp.). That Act only applied to bills drawn or dated and payable in England, Wales and Berwick-upon-Tweed, for the sum of five pounds sterling and upwards. There is no decided case in Ontario that this latter Act was in force here, and being of a local character it is extremely doubtful whether it would have been held to be so.[1] This enactment will not be of much utility, except where the bill is still held by the payee, as there is no provision for obtaining indorsements over again; and not even then if the bill has been accepted, as it is equally silent on the subject of procuring a new acceptance.[2]

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[1] Doe dem. Anderson *v.* Todd, 2 U.C.R. 82; Regina *v.* Barnes, 45 U.C.R. 276; Forsyth's Constitutional Law, pp. 18 *et seq.*

[2] See however as to this, Byles on Bills, 6 Am. Ed. 378; Davis *v.* Dodd, 4 Taunt. 602.

Sec. 68, 69.

The sufficiency of the security offered is to be determined as a question of fact. No definite rule can be laid down. It must be to the satisfaction of the drawer. If he acted unreasonably or capriciously he would have to pay the costs of any action brought against him and would be liable also to any damages that the loser of the bill had sustained by his delay.

Action on lost bill.

69. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 70.*)

It was formerly held that no action would lie on a lost bill at the suit of the loser;[1] or even on the consideration.[2] In such cases the proper remedy was in equity, not only on the ground that there was no remedy at law, but also on account of the power Courts of Equity possessed of compelling the plaintiff to give the defendant proper indemnity. This led to the passing in Ontario of the enactment found in Con. Stat. U.C., Cap. 42, Sec. 33, and subsequently in Sec. 143 of the Common Law Procedure Act, R.S.O. 1877, Cap. 50, which provided that in an action founded upon a lost bill or other negotiable instrument, the court or judge might order that the loss of the instrument should not be set up, if an indemnity against the claims of any other person under such instrument was given to the satisfaction of the court or judge. This statute, however, did not take away the jurisdiction of equity over lost bills. After the introduction of the Ontario Judicature Act, R.S.O., Cap. 44, this section in the Com. L. P. Act was repealed as an unnecessary provision,

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[1] Hansard *v.* Robinson, 7 B. & C. 95; Davis *v.* Dodd, 4 Taunt. 602; Ramuz *v.* Crowe, 1 Exch. 167.

[2] Crowe *v.* Clay, 9 Exch. 604.

since, by Sec. 16 of the Judicature Act, the former Courts of Law and Equity were consolidated and authorized to administer law and equity concurrently. Secs. 69, 70.

The section annotated is a reproduction of the repealed Sec. 143 of the Common Law Procedure Act.

If no tender of indemnity is made before action, the plaintiff will seldom be entitled to his costs and may be ordered to pay the defendant his costs.[1]

The loss of a bill is no excuse for neglect to give notice of dishonour.[2] See Sec. 51 (8) as to the mode of protesting a lost bill.

BILL IN A SET.

As to bills in sets.

70. (1). Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 71.*)

Foreign bills are often drawn in parts. See Sec. 4 as to the definition of a foreign bill. Omission to number the parts of the bill, and make each refer to the other, would be in effect to issue so many separate bills, and to render the drawer liable upon each in the hands of a holder in due course, Sec. 29, or even perhaps a holder for value, Sec. 27 (2).[3]

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[1] King *v.* Zimmerman, L.R. 6 C.P. 466; La Banque Jacques Cartier *v.* Strachan, 5 P.R. 159.

[2] Thackeray *v.* Blackett, 3 Camp. 164.

[3] Davidson *v.* Robertson, 3 Dow. 218; Kearney *v.* West Granada Gold and Silver Mining Co., 1 H. & N. 412.

Sec. 70.

If indorsed to different persons.

(2). Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

The indorser is bound to pass all the parts of the bill in his possession to his transferee.[1] The indorser incurs liability on one of the parts only unless he delivers them to different holders.[2]

If negotiated to different holders.

(3). Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

As to payment in due course, see Sec. 59.

Acceptance.

(4). The acceptance may be written on any part, and it must be written on one part only:

If more than one part is accepted.

(5). If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill

The drawee should only pay the part he accepts. Upon payment of that, the whole bill is discharged.[3] Should he pay a part that does not bear his acceptance his liability still continues: see next sub-section.

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[1] Pinard *v.* Klochman, 3 B & S. 388.
[2] Holdsworth *v.* Hunter, 10 B. & C. 449.
[3] Holdsworth *v.* Hunter, *supra.*

(6). When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof: Secs. 70, 71. Payment without delivery of proper part.

(7). Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. Discharge.

As to the mode in which a bill may be discharged otherwise than by payment, see, *ante*, Secs. 59–63 and notes.

CONFLICT OF LAWS.

The subject of the "Conflict of Laws" is too comprehensive to be treated in the compass of an elementary work of this character. The student who desires to master it is referred to Story's Conflict of Laws, *passim*; Savigny's International Law, Sec. XXX., Note B.; Byles on Bills, Cap. 24, on "Foreign Law."

The rules laid down in this section will have the merit of settling the law on some of these points. The decisions of the courts upon the subject of international law are often confusing, irreconcilable and contradictory.

71. (1). Where a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:— Rules where laws conflict.

Sec. 71.
Validity, how determined.

(*a*) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 72.*)

A note made in Ontario, payable in Quebec, before the Act, was held a contract made in Quebec, the place of performance.[1]

Bills of exchange were drawn in France by a domiciled Frenchman, in the French language in English form, on an English company, who duly accepted them. The drawer indorsed the bills and sent them to an Englishman in England. Held, that the acceptor could not dispute the negotiability of the bills by reason of the indorsement being invalid according to French law.[2]

In Story's Conflict of Laws, Sec. 314, Mr. Justice Story puts the case of a negotiable bill of exchange, drawn in Massachusetts on England, indorsed in New York, and again by the first indorsee in Pennsylvania, and by the second in Maryland, and the bill is dishonoured; and he asks what damages will the holder be entitled to, the law as to damages in these States being different; and he replies that in each case the *lex loci contractus* is to govern. The drawer is liable on the bill according to the law of the place where the bill was drawn, and the successive indorsers are liable on the bill according to the law of the place of their indorsement, every indorsement being treated as a new and substantive contract. And again, in Sec. 315, he says, "It has sometimes

[1] Court *v.* Scott, 32 C.P. 148.

[2] Marseilles Extension Railway and Land Company, *in re* Smallpages and Brandon's Cases, 30 Ch. D. 598.

been suggested that this doctrine is a departure from the rule that the law of the place of payment is to govern. But, correctly considered, it is entirely in conformity with the rule. The drawer and indorsers do not contract to pay the money in the foreign place on which the bill is drawn; but only to guarantee its acceptance and payment in that place by the drawee; and, in default of such payment, they agree, upon due notice, to reimburse the holder in principal and damages at the place where they respectively entered into the contract."[1] Sec. 71.

Provided that—

(1). Where a bill is issued out of Canada, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue. Proviso.

Our courts do not concern themselves with the revenue laws of foreign countries.[2]

(2). Where a bill, issued out of Canada, conforms, as regards requisites in form, to the law of Canada, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada.

The effect of this is that *prima facie* the law of the foreign state, as to requisites in form, will be assumed to be the same as our own until the contrary is shown.[3] If the law was shown to be otherwise, then the rule laid down in sub-section (*a*), *ante*, would govern.

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[1] Cloyes *v.* Chapman, 27 C.P. 22, at pp. 29, 30; Gibbs *v.* Fremont 9 Exch. 25; Story *v.* McKay, 15 O.R. 169.

[2] James *v.* Catherwood, 3 Dowl. & Ry. 190; Bristow *v* Sequeville, 5 Exch. 275.

[3] Toponce *v.* Martin, 38 U.C.R. 411.

Sec. 71. This sub-section relates to mere extrinsic formalities; but it would likewise still be competent for the party liable, to show that there was some latent vice. So where a bill, drawn by a Canadian, while temporarily in New York, on merchants in Toronto, was protested for non-acceptance, upon its being shown that it had been given for a debt due in respect of certain gambling transactions on the New York Stock Exchange, and that, as such, it was, under the law of New York, an illegal contract and invalid; it was held in an action by the payees against the drawer that the plaintiffs could not recover.[1] The rule is otherwise where the bill is drawn and accepted here.[2] Where there is no evidence to the contrary the law of the foreign country is assumed to be the same as our own; therefore where a note had been given in Utah for compounding a felony, and there was no evidence that such a consideration was valid there, the note was held invalid here.[3] Where the defence is that the note is void by the *lex loci contractus* and the latter differs from our law it should be pleaded.[4]

Drawing, indorsement, etc.

(*b*) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made:

Proviso.

Provided, that where an inland bill is indorsed in a foreign country, the indorsement shall, as regards the payer, be interpreted according to the law of Canada.

The provisions referred to are sub-sections (*c*) and (*e*) of this section.

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[1] Story *v.* McKay, 15 O.R. 169.

[2] Bank of Toronto *v.* McDougall, 28 C.P. 345.

[3] Toponce *v.* Martin, 38 U.C.R. 411.

[4] Hope *v.* Caldwell, 21 C.P. 241; Robertson *v.* Caldwell, 31 U.C.R. 402.

A bill of exchange drawn in England and payable in Spain, was indorsed in England by the defendant to the plaintiff, who indorsed it to M., residing in Spain. Acceptance having been refused, a delay of twelve days occurred before M. wrote to inform the plaintiff of the dishonour. On receipt from M. of the notice of dishonour, the plaintiff gave immediate notice to the defendant. No notice of dishonour by non-acceptance is required by the law of Spain. It was held that the plaintiff was entitled to recover the amount of the bill.[1] Sec. 71.

(*c*) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured. Duties of holder.

Therefore if a bill drawn here and payable abroad is dishonoured there and notice of dishonour given according to the laws of that country, it is sufficient, although such notice is not according to our law.[2]

(*d*) Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. Currency.

The practice of bankers in Canada with regard to sterling drafts has been heretofore, in the absence of any stipulation

[1] Horne *v.* Rouquette, 3 Q.B.D. 514.

[2] Hirschfield *v.* Smith, L.R. 1 C.P. 340; Horne *v.* Rouquette, 3 Q.B.D. 514; Rothschild *v.* Currie, Q.B. 43.

Sec. 71. to the contrary, to calculate their value at the rate of four dollars and eighty-six cents and two-thirds of a cent for each sovereign, see R.S.C., Cap. 30, Sec. 2. This is called by bankers, "the par of exchange." Hereafter the rate will, in the absence of any agreement, have to be calculated at the rate for sight drafts on the day the bill is payable: and perhaps this will make "current rate" mean such rate; so that even where a bill is made payable at the *current rate* of exchange it will fall within this rule, unless these words have by widespread custom or usage acquired some other precise, definite and generally acknowledged meaning. According to the practice of many banks, "current rate" is the equivalent of the rate for drafts payable sixty days after sight.

Due date.

(*e*) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

In some countries days of grace are not allowed, *e.g.* France. If a bill be drawn here and payable there, it is not entitled to grace; and conversely if drawn there, payable here, days of grace are to be allowed.[1] In the United States the law merchant, as it prevails in England, limits the allowance of grace to three days.[2]

Evidence of protest.

(*f*) If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonour, and a notarial certificate of the service of such notice,

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[1] Rouquette *v.* Overman, L.R. 10 Q.B. 525, at pp. 536 *et seq.*

[2] Daniel, "Negotiable Instruments," Sec. 622.

shall be received in all courts as *prima facie* evidence of such protest, notice and service. Sec. 71.

This sub-section was added in the Senate, and is not in the Imperial Act. It places a foreign instrument of protest on the same footing as Canadian protests, see Sec. 93 (5) It is only *prima facie* evidence, and if it were disputed it would be necessary to be prepared with other evidence that the law of the foreign country had been complied with, see sub-section (*c*), *ante.*

Sec. 72.

PART III.

CHEQUES ON A BANK.

Cheque defined.

72. (1). A cheque is a bill of exchange drawn on a bank, payable on demand.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 73.*)

This section is declaratory of the law.[1]

It was definitely decided before the Act that a cheque was not an equitable assignment by the drawer, *pro tanto*, of his balance at his banker's.[2] See also the next sub-section and Sec. 53, *ante*.

Certain provisions to apply.

(2). Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Irrespective of the general understanding upon this subject before this Act, a cheque, being a bill payable on demand, would not require to be presented for acceptance, Sec. 39, and would not bear days of grace, Sec. 14 (1).

Apart from the provisions contained in the next and the following section, which distinguish cheques from bills of exchange, there are other distinctions which arise from the relations existing between customers and their bankers.

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[1] Keane *v.* Beard, 8 C.B.N.S., Sec. 372; McLean *v.* Clydesdale Banking Co., 9 App. Cas. 95.

[2] Hopkinson *v.* Forster, L.R. 19 Eq. 74; Caldwell *v.* Merchants' Bank, 26 C.P. 294.

A bank having funds is bound to pay its customer's cheque.[1] There is an implied contract between them to this effect. Sec. 72.

But where a banker refused to honour a cheque, on the ground that a breach of trust was contemplated by the drawer to his the banker's knowledge, he was held to be justified in so doing.[2] As a cheque need not be accepted, if payment is refused, the holder cannot enforce payment from the bank, as there is no privity between them. This is subject to two exceptions: where the holder by reason of delay loses his remedy against the drawer and becomes a creditor of the bank to the extent that the drawer is discharged, see next section (*a*) and (*c*); and where, under Sec. 79, a bank improperly pays a crossed cheque and becomes liable to the true owner for any loss he sustains.

A cheque operates as payment until it has been presented and payment refused;[3] but if payment is stopped the debt instantly revives.[4]

Presentment and notice of dishonour are just as necessary in the case of cheques as of bills, in order to render the drawer and prior indorsers liable, see Sec. 45 (1), *ante*.[5]

It was held in England before the Act that notice of dishonour would be excused if there was no reasonable expectation that the cheque would be paid,[6] but now, see Sec. 46 (2).

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[1] Marzetti *v.* Williams, 1 B. & Ad. 415; Rolin *v.* Steward, 14 C.B. 595.

[2] Gray *v.* Johnson, 3 H.L. 1; Clench *v.* Consolidated Bank of Canada, 31 C.P. 169.

[3] Hughes *v.* Canada Permanent Loan and Savings Society, 39 U.C.R. 221; McLeish *v.* Howard, 3 A.R. 503.

[4] Cohen *v.* Hale, 3 Q.B.D. 371.

[5] Prideaux *v.* Criddle, L.R. 4 Q.B. 455; Blackley *v.* McCabe, 16 A.R. 295, at p. 307; and see also Carew *v.* Duckworth, L.R. 4 Exch. 313, at p. 319.

[6] Carew *v.* Duckworth, *supra*.

Sec. 73. Presentment of cheque for payment.

73. Subject to the provisions of this Act—

(*a*) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid;

(*b*) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case;

(*c*) The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 74.*)

In the Imperial Act the word "banker" is used instead of "bank" in our Act.

This section is new law. Formerly the holder of a cheque was in general bound to present it not later than the day following its receipt;[1] but it was no answer to an action by the holder against the drawer, that it was not presented within a reasonable time, unless the fund had been lost by the

[1] Alexander *v.* Burchfield, 7 M. & G. 1061.

delay, as by failure of the banker;[1] and the drawer remained liable upon it until six years had elapsed.[2] By the failure of the bank the drawer was absolutely discharged, but still was entitled to rank upon the estate of the banker for the full amount of his claim. Under this section the holder becomes a creditor for the amount of the cheque to the extent that the drawer is discharged. Secs. 73, 74.

The indorser of the cheque would be discharged in any event, if it is not presented within a reasonable time, see Sec. 45 (1), *ante.*

Marking a cheque good is not an acceptance so that the holder can sue the bank. See Sec. 17 (2) as to what constitutes a valid acceptance.

The payees of a cheque took it to the bank on which it was drawn on the afternoon of the day on which they received it from the drawer and got it marked "good," the amount being charged to the drawer's account. They then took it away without demanding payment. The bank, on the evening of the same day, suspended payment, and on the following day, on presentation of the cheque, payment was refused. Held, that the drawer of the cheque was discharged from all liability thereon.[3]

74. The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by— Revocation of bank's authority.

(*a*) Countermand of payment;

(*b*) Notice of the customer's death.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 75.*)

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[1] Heywood *v.* Pickering, L R. 9 Q.B. 428; Robinson *v.* Hawksford, 9 Q.B. 52; Serle *v.* Norton, 2 M. & R. 401; Blackley *v.* McCabe, 16 A.R. 295.

[2] Laws *v.* Rand, 3 C.B.N.S. 442.

[3] Boyd *v.* Nasmith, 17 O.R. 40.

Sec. 74.

Although the authority of the bank to pay the cheque is terminated, that does not, of course, discharge the drawer's liability, nor that of his estate, in the event of his death, to the payee or to a holder in due course;[1] nor the liability of the indorsers if they have been duly notified of the dishonour.

The holder would be entitled to recover in an action upon the cheque against these parties, or if the payee was plaintiff he might recover upon the consideration in an action against the drawer.[2]

CROSSED CHEQUES.

The provision with regard to crossed cheques is new in this country, but as it is not compulsory, it cannot be said, in one sense, to make a change in the law. The practice was in vogue in Great Britain before the Act, or before any legislative recognition of it at all,[3] and prevails in most other countries, except the United States. It has, indeed, been in use to a limited extent in Canada, especially in the case of Canadian banks issuing cheques payable in England.

It is a convenient provision by which the addition prescribed by the Act put on the face of a cheque will inform the holder how it can be cashed. The principle is that a crossed cheque must be presented to the bank upon which it is drawn through another bank, except in the case where the payee is a customer of such bank, when, it is submitted, it must be passed through his account; for in no case should money be paid over the counter on a crossed cheque.

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[1] McLean *v.* Clydesdale Banking Co., 9 App. Cas. 95; per Ld. Blackburn p. 111.

[2] Cohen *v.* Hale, 3 Q.B.D. 371.

[3] See 19 & 20 Vic., Cap. 25 (Imp.); 20 & 21 Vic., Cap. 79 (Imp.).

This Act does not in express terms define *the effect* of crossing a cheque, as did the English Act, 19 and 20 Vic., Cap. 25. The last-mentioned Act was repealed by 39 and 40 Vic., Cap. 81, and was not in force at the time of the passing of the English "Bills of Exchange Act, 1882," but it may still be referred to for its definition. It had enacted that crossing a cheque should have the force of a direction to the bankers upon whom it was drawn, that the same was to be paid only to or through some banker, and the same should be payable only to or through some banker.

The crossing of cheques having thus received legislative recognition in England, and the effect having been explained, 39 and 40 Vic., Cap. 81, was passed and is reproduced in effect under this division or title of our Act. See Secs. 78 (2) and 79, from which a definition of the effect of crossing a cheque may be implied.

No person is obliged to take a crossed cheque. If he does, he takes it subject to his chance of getting it cashed by a bank other than that on which it is drawn, unless he negotiates it away to some other person.

As in general the holder of a crossed cheque will only be able to obtain payment through a bank, it will be of little use to him unless he keeps an account at a bank. See definition of a bank, Sec. 2 (*c*). This will restrict their use for general payments, and the probability is that they will be confined almost entirely to the settling of commercial accounts. The advantage of crossed cheques to the drawer will be that subject to his having funds, the giving of one will be, for all practical purposes, equivalent to actual payment, see Sec. 79, *post*.

The provision as to crossing of cheques would have been of great importance had Sec. 60 of the Imperial Act, see *ante* p. 110, been retained. Since, however, banks will henceforward continue to pay cheques payable to order at their peril, subject to the limitation contained in the proviso to Sec. 24 of our Act, it is improbable that customers will very generally avail themselves of this system.

Sec. 75. The crossing does not restrain the negotiability.[1] Its only effect is that when at last the cheque comes for payment, it must be presented through a bank, or if crossed specially, through the bank to which it is specially crossed, see Sec. 78 (2), *post.*

General crossing defined.

75. (1). Where a cheque bears across its face an addition of—

(*a*) The word "bank" between two parallel transverse lines, either with or without the words "not negotiable;" or—

(*b*) Two parallel transverse lines simply, either with or without the words "not negotiable;"

That addition constitutes a crossing, and the cheque is crossed generally.

(Imperial Act 45 and 46 Vic., Cap. 61, Sec. 76.)

In the Imperial Act, in lieu of the word "bank" the words "and company or any abbreviation thereof" are used, as private bankers are included in the definition of "banker" in that Act; whereas our definition of "bank" is limited to chartered institutions, Sec. 2 (*c*) *ante.* See also "The Bank Act," 53 Vic., Cap. 31, Secs. 2 (*a*), 3 and 100, and Schedule "A" to that Act. A presentation of a crossed cheque through a private banker will therefore be invalid here.

A cheque may be crossed generally under this section in one of four modes:

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[1]Bellamy *v.* Marjoribanks, 7 Exch. 389; Carlon *v.* Ireland, 5 E. & B. 765; Simmons *v.* Taylor, 2 C.B.N.S. 528; 4 C.B.N.S. 463; Smith *v.* Union Bank, 1 Q.B.D. 31.

By drawing across its face—

(*a*) two parallel transverse lines simply;

(*b*) two parallel transverse lines with the word "bank" between them;

(*c*) two parallel transverse lines with the words "not negotiable" between them;

(*d*) two parallel transverse lines with the words "bank not negotiable" between them.

As to the effect of "not negotiable," see, *post*, Sec. 80. A cheque which has been crossed may be uncrossed by the drawer, see Sec. 76 (7). No other person can uncross it, and to make any change is a material alteration, Sec. 77; and avoids the cheque, see Sec. 63.

Special crossing.

(2). Where a cheque bears across its face an addition of the name of a bank, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that bank.

In this and the following sections where the word "bank" is used in our Act, "banker" is used in the English Act.

The last sub-section having defined a general crossing, this defines a special crossing.

A special crossing is effected by writing the name of a particular bank in the instances (*b*) or (*d*) put in the notes to the preceding sub-section, instead of the word "bank" merely. This is usually done at the request of the drawee, where he intends to deposit the cheque to his credit in the bank to which it is crossed specially and of which he is a customer.

Crossing by drawer or after issue.

76. (1). A cheque may be crossed generally or specially by the drawer.

Sec. 76. (*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 77.*)

As to the distinction between general and special crossing, see the preceding section.

General or special. (2). Where a cheque is uncrossed, the holder may cross it generally or specially:

May be varied. (3). Where a cheque is crossed generally, the holder may cross it specially:

Words may be added. (4). Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

The drawer may, in the first instance, cross the cheque in any of the four modes mentioned in Sec. 75, or he may cross it specially. If he omits to cross it, the holder may cross it either generally or specially. If the drawer crosses it generally, the holder may cross it specially: he could do so by filling the blank, Sec. 20 (1) and Sec. 77. In any of the above cases the holder may add the words "not negotiable."

Re-crossing for collection. (5). Where a cheque is crossed specially the bank to which it is crossed may again cross it specially, to another bank for collection.

A bank might require to do this where it could not present the cheque directly to the bank upon which it is drawn, *e.g.* where the latter was in a different town.

Crossing by bank. (6). Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself.

This might be done by a bank to prevent possible frauds by its own employees.

(7). A crossed cheque may be reopened or uncrossed by the drawer writing between the transverse lines, and initialling the same, the words "pay cash." Secs. 76, 77, 78. Uncrossing crossed cheque.

This sub-section is not in the Imperial Act, but accords with mercantile practice in England. Where a drawer reopened or uncrossed the cheque, it would probably be at the instance of the holder, who anticipated or experienced difficulty in getting it cashed. There is no provision for reopening or uncrossing a cheque, by an indorser, who has himself crossed it.

77. A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. Crossing is a material part of cheque.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 78.*)

See Sec. 76 (3) and (4) as to what additions or alterations are authorized, and Sec. 76 (7) as to who may reopen or uncross the cheque.

At common law a holder could obliterate the crossing,[1] and the erasure did not constitute a forgery.[2]

78. (1). Where a cheque is crossed specially to more than one bank, except when crossed to (another bank as agent for collection,) the bank on which it is drawn shall refuse payment thereof. Duties of bank as to crossed cheques

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 79.*)

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[1] Bellamy *v.* Marjoribanks, 7 Exch. 389; Carlon *v.* Ireland, 5 E. & B. 765.

[2] Simmons *v.* Taylor, 4 C.B.N.S. 463.

Sec. 78. In the Imperial Act the words "an agent for collection being a banker" are used instead of the words in brackets.

All the sections of this part were transcribed into the Imperial Act from 39 and 40 Vic., Cap. 81. This latter statute is said to have been passed in consequence of a decision that where a cheque had been specially crossed and had been paid through a bank other than the one to which it was so specially crossed, the paying bank was not liable in an action at the suit of the party from whom it had been stolen.[1]

Liability for improper payment.

(2). Where the bank on which a cheque so crossed is drawn, nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or (to the bank acting as its agent for collection, it) is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid.

In the Imperial Act the words "his agent for collection being a banker, he" are used instead of the words in brackets.

This sub-section meets the case which was the subject of litigation in Smith *v.* Union Bank *supra*, and the paying bank would now, under similar circumstances, be liable to the true owner. It seems, however, that this is merely an additional remedy against the bank and not in substitution of the right of recourse against the bank that the drawer has in any case, whether the cheque be crossed or not, and of repudiating its payment if it has been paid on a forged indorsement.[2] If the cheque was payable to bearer, or stolen

[1] Smith *v.* Union Bank of London, 1 Q.B.D. 31.
[2] Bobbett *v.* Pinkett, 1 Exch. D. 368.

after it had been indorsed in blank by the payee, there is no remedy apart from this section unless the cheque is crossed "not negotiable;"[1] and see Sec. 80. **Sec. 78.**

When liability does not accrue.

Provided, that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, (or to the bank acting as its agent for collection,) as the case may be.

The words in brackets are not in the Imperial Act, but in lieu thereof "his agent for collection being a banker."

This provision relieves the paying bank where the crossing has been dealt with in contravention of the provisions of Sec. 77 if there are *bona fides* and an absence of negligence. The fact of obliteration of itself, or any alteration apparent in the crossing, would be a circumstance from which, as a fact, negligence might be inferred.[2]

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[1] Chalmers on Bills, p. 240.

[2] Carlon *v.* Ireland, 5 E. & B. 765.

Sec. 79.

Protection to bank and drawer where cheque is crossed.

79. Where the bank, on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 80.*)

This section exemplifies the great advantage to banks in the system of crossing cheques. It was originally designed for the benefit of the holder only.[1] This section gives absolute protection to the bank, notwithstanding that the indorsement may have been forged. The drawer is only relieved if the cheque can be traced into the hands of the payee, but the bank in any case if acting *bona fide*. If the payee's name has been forged on a cheque payable to order, after it has come into his hands, the loss will fall upon him; or if it has not come into his hands, on the drawer; and their remedy respectively will only be against the person who improperly received the money.[2] The true owner, in general, has no remedy against the bank through which the cheque was presented, Sec. 81. If the bank on which a cheque is drawn fails, the bank presenting it may recover back the money paid upon it,[3] and the same rule will apply even though the cheque is drawn upon one of its branches and made payable at par at the former, if it is subsequently dishonoured.[4]

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[1] Bellamy *v.* Marjoribanks, 7 Exch. 389, per Parke B. 403.

[2] Ogden *v.* Benas, L.R. 9 C.P. 513.

[3] Woodland *v.* Fear, 7 E. & B. 519; Timmins *v.* Gibbons, 18 Q.B. 722.

[4] Rose-Belford Printing Co. *v.* Bank of Montreal, 12 O.R. 544; Owens *v.* Quebec Bank, 30 U.C.R. 382; Prince *v.* Oriental Bank Corporation, 3 App. Cas. 325.

Secs. 80, 81.

Effect of crossing on holder.

80. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 81.*)

The Imperial Act 39 and 40 Vic., Cap. 81, Sec. 12, first introduced the "not negotiable" clause in regard to crossed cheques. Cheques so crossed are intended to be freely transferable, but do not possess the incidents of negotiable instruments now provided for in Sec. 29, *ante*.

Protection to collecting bank.

81. Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 82.*)

This section is merely to provide for the case of a bank collecting for a customer, in which case it will not be liable to the true owner if it acts in good faith and without negligence. The provision applies whether the words "not negotiable" are used or not.[1]

[1] Mathiesson *v.* London and County Bank, 5 C.P.D. 7.

Sec. 82.

PART IV.

PROMISSORY NOTES.

Promissory note defined.

82. (1). A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 83.*)

It must contain a promise to pay a definite sum of money and nothing more.[1]

An instrument in the form of a promissory note, given as collateral security for a mortgage, had these additional words, "which when paid is to be indorsed on the mortgage bearing even date with this note," and it was held that this did not invalidate it, but that it was a negotiable instrument.[2] So "I promise to pay, etc., three months after date, as per agreement" is a good promissory note, so long as the agreement does not make the promise conditional.[3] A memorandum on a bill or note made before it is complete and being part of the original contract may control its negotiability.[4] The insertion of the words "this note to be held as collateral security" was held to prevent an instrument operating as a

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[1] Mortgage Insurance Corporation *v.* Commissioners of Inland Revenue, 21 Q.B.D. 352.

[2] Chesney *v.* St. John, 4 A.R. 150.

[3] Jury *v.* Baker, E.B. & E. 459.

[4] Swaisland *v.* Davidson, 3 O.R. 320.

promissory note.[1] A contemporaneous verbal agreement to extend for two years the time for payment of a note payable on demand is inadmissible.[2] Sec. 82.

A deposit receipt "payable to order" has been held so far to partake of the character of a promissory note as to be negotiable:[3] it has been held otherwise however.[4] No general rule can be laid down but it will depend on the form of each particular receipt.

(2). An instrument in the form of a note payable to maker's order is not a note within the meaning of this section, unless and until it is indorsed by the maker. Indorsement by maker.

Should it not be indorsed by the maker until its maturity it is discharged, see Sec. 61.

(3). A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof. Collateral pledge does not invalidate.

The right to the security would pass with the instrument.[5]

The right to hold collateral security is not lost, although the original debt is barred by the Statute of Limitations.[6]

(4). A note which is, or on the face of it purports to be, both made and payable within Inland and foreign.

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[1] Hall *v.* Merrick, 40 U.C.R. 566; Storm *v.* Sterling, 3 E. & B. 832.

[2] Porteous *v.* Muir, 8 O.R. 127; Abrey *v.* Crux, L.R. 5 C.P. 37; Federal Bank *v.* Hope, 6 O.R. 209.

[3] *Re* Central Bank, Morton and Block's Cases, 17 O.R. 574; Voyer *v.* Richer, 13 L.C. Jur. 213; 15 L.C. Jur. 122; L.R. 5 P.C. 461.

[4] Lee *v.* Bank of British North America, 30 C.P. 255.

[5] Central Bank *v.* Garland, 26 Can. Law Jour. 541; Cochrane *v.* Boucher, 3 O.R. 462, 472. See also Sarnia Agricultural Implement Manufacturing Company (Limited) *v.* Hutchinson, 17 O.R. 676.

[6] Wiley *v.* Ledyard, 10 P.R. 182.

Secs. 82, 83, 84.

(Canada,) is an inland note: any other note is a foreign note.

"British Islands," Imperial Act. See a similar provision as to bills, *ante*, Sec. 4. It is not necessary to protest a foreign note, except for the preservation of the liabilities of indorsers, see *post*, Sec. 88 (4).

Delivery necessary.

83. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 84.*)

See Sec. 2 (*f*) for a definition of "delivery." As to the requisites of a valid delivery, see Sec. 21 (2).

Joint and several notes.

84. (1). A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor:

As to number.

(2). Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 85.*)

If liable jointly, judgment without satisfaction against one of them is a bar to proceedings against the other,[1] except in Ontario in the case of a specially indorsed writ, when one of them does not appear and judgment is entered and execution issued against him under the Judicature Act. See Con. Rule No. 706.

Where, in a joint and several note, one maker is the principal debtor and the other only a surety, in equity, the rules

[1] King *v.* Hoare, 13 M. & W. 494; Cambefort *v.* Chapman, 19 Q.B.D. 229.

applicable to contracts of suretyship apply,[1] even where the relationship is created after the debt accrued, if notice is given to the creditor.[2] But see as to this, Sec. 28 (2) and notes. Secs. 84, 85.

85. (1). Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement: if it is not so presented, the indorser is discharged; (if however, with the assent of the indorser it has been delivered as a collateral or continuing security it need not be presented for payment so long as it is held as such security.) Note payable on demand.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 86.*)

The words in brackets are not in the Imperial Act. The assent may be obtained in any way that a contract may be made. Where no time for payment is mentioned, the note is payable on demand, Sec. 10 (2).

(2). In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case. Reasonable time.

See *ante*, Sec. 40 (3) and notes, as to the construction of the expression "reasonable time."

(3). Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of Defects without notice.

[1] Oriental Financial Corporation *v.* Overend Gurney & Co., L.R. 7 Ch. App. 142.

[2] Bailey *v.* Griffith, 40 U.C.R. 418. See Swire *v.* Redman, 1 Q.B.D. 536.

Secs. 85, 86.

title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

The rule laid down in this section differs from that in the case of bills, see Sec. 36 (3). The reason of the distinction seems to be that demand bills are intended to pass current and to be presented without delay unless negotiated by the holder; see likewise the provisions of Sec. 40 (1): whereas notes payable on demand are often held in the same hand for a lengthened period, and are given with that understanding.

As against the maker, however, a note payable on demand is a present debt, and at maturity as soon as given.[1] As against the indorser, it is not to be deemed overdue simply because it bears date some time back.[2] The Statute of Limitations runs in favour of the maker from its date:[3] as regards the indorser, as no right of action accrues against him until the note is dishonoured, it is conceived that the statute does not run against him until then, but there is no decided case to this effect. See Sec. 47 (2) and Sec. 55 (2) (*a*).

Presentment of note for payment.

86. (1). Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place. But the maker is not discharged by the omission to present the note for payment on the day that it matures. But if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court. If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable.

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[1] *In re* George, Francis *v.* Bruce, 44 Ch. D. 627.

[2] Glasscock *v.* Balls, 24 Q.B.D. 13, 15.

[3] Norton *v.* Ellam, 2 M. & W. 461.

(Imperial Act 45 and 46 Vic., Cap. 61, Sec. 87.) **Sec. 86.**

Sec. 87 (1) of the Imperial Act reads, "Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable." This section in our Act as originally introduced followed the English Act, except that the words "before action" were inserted after the word "place," where it occurs the second time. It was amended in the Senate to read as it now appears.

So far as the Province of Ontario is concerned, this is an important alteration of the law. Before this Act the addition of the words "only, and not otherwise or elsewhere" was necessary, otherwise the note was payable generally. See R.S.C., Cap. 123, Secs. 15 and 16. The maker will not be discharged merely because of omission to present the note the day it matures. See also Sec. 52 (2) and Sec. 88. If, however, the maker could show that he was damnified by such omission, serious consequences might result from it.[1] It might also affect the right to recover interest.

It may probably be found a convenient practice hereafter to protest notes when dishonoured so as to preserve evidence of the presentment, the protest itself being *prima facie* evidence of that fact, under Sec. 93 (5), since it will be necessary to establish the fact of presentment in an action against the maker to avoid the risk of losing the costs, or even perhaps of having to pay them.

Quære whether when a note is made payable at a particular place, *e.g.* at a bank or at the place of business of the payee, the mere fact of having the note there ready to be paid if the maker calls for that purpose is sufficient presentment. It would be safer in every case to make a formal demand on a clerk or some other person in charge. The

[1] Alexander *v.* Burchfield, 7 M. & G. 1061.

Sec. 86.

case of Bailey *v.* Porter[1] is usually quoted as an authority that if a bill is payable at a bank and the same bank is holder at maturity, that fact alone amounts to presentment; but a reference to this case shows that it hardly supports the proposition. The rule in the United States appears to be that the mere presence of the instrument there is sufficient.[2]

Liability.

(2). Presentment for payment is necessary in order to render the indorser of a note liable.

This is merely declaratory of the law as it was before the Act.[3]

Place for presentment.

(3). Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated, by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

A place of payment would be indicated by way of memorandum only if it was contained in a foot-note.[4] If it is introduced into the body of the note, it becomes part of the contract.[5] Where the memorandum was printed at the bottom of the note, Lord Ellenborough held that it formed part of the contract;[6] but it would probably be held otherwise under this Act.

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[1] 14 M. & W. 44.

[2] Daniel on Negotiable Instruments, Sec. 656.

[3] Gibb *v.* Mather, 2 Cr. & J. 254; Roche *v.* Campbell, 3 Camp. 247; Saunderson *v.* Judge, 2 H. Bl. 510; Siddall *v.* Gibson, 17 U.C.R. 98.

[4] Saunderson *v.* Judge, 2 H. Bl. 510.

[5] Saunderson *v.* Bowes, 14 East 500; Dickinson *v.* Bowes, 1 East 110; Howes *v.* Bowes, 16 East 112; S.C., 5 Taunt. 30.

[6] Tregothick *v.* Edwin, 1 Stark N.P.C. 468.

As to presentment for payment, see Sec. 45; as to cases where presentment is excused, see Sec. 46. The rules laid down in Secs. 45 and 46 apply to notes, Sec. 88. Secs. 86, 87, 88.

87. The maker of a promissory note, by making it— Liability of maker.

(*a*) Engages that he will pay it according to its tenor.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 88.*)

The maker of a note corresponds with the acceptor of a bill, see Sec. 88 (2). As to the liability of an acceptor, see Sec. 54. Whilst the acceptor may make his acceptance conditional, Sec. 19, the promise of the maker of a note must be unconditional, Sec. 82. See Sec. 57 as to the measure of damages if the note is dishonoured.

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

A holder in due course is defined in Sec. 29, *ante*. The maker cannot, for instance, be heard to say that the indorser is bankrupt and cannot indorse.[1]

88. (1). Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes. Application of Part II. to notes.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 89.*)

The exceptions are contained in sub-section 3, *post*. One of the provisions, in which an exception is elsewhere to be

[1] Perkins *v.* Beckett, 29 C.P. 395.

Sec. 88. found in this part, is contained in Sec. 85 (3); which, compare with Sec. 36 (3).

Corresponding terms.

(2). In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order;

What provisions do not apply.

(3). The following provisions as to bills do not apply to notes, namely, provisions relating to—

(*a*) Presentment for acceptance;
(*b*) Acceptance;
(*c*) Acceptance *supra* protest;
(*d*) Bills in a set;

As to foreign note.

(4). Where a foreign note is dishonoured, protest thereof is unnecessary, (except for the preservation of the liabilities of indorsers).

The words in brackets are not in the Imperial Act, but were added in the Senate. In the original draft of the Act, the words, "except in the Province of Quebec," were inserted, but they were struck out in the Senate. It is conceived that in this particular the practice of the several provinces will now be uniform. It may be implied from the addition of these words that it is necessary without distinction in all cases to protest a foreign note to preserve the liability of indorsers no matter where resident, whether in or out of Canada.

It will also be advisable to protest a foreign note for the purpose of charging a foreign party in his own country. A foreign bill must be protested, see Sec. 51 (2).

PART V.

SUPPLEMENTARY.

Good faith.

89. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly whether it is done negligently or not.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 90.*)

This section is founded upon the distinction between honest blundering or carelessness and a dishonest refraining from inquiry.[1] As against a holder for value it is no defence that he has taken a bill or note which has been fraudulently disposed of, and under circumstances which ought to have excited the suspicion of prudent men that it had not been fairly obtained; nothing short of gross negligence will defeat his title.[2]

Gross inadequacy of value given for a bill is not of itself sufficient to affect the title of the holder, but it is an important element in considering whether he acted *bona fide*.[3]

Signature

90. (1). Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 91*)

[1] Jones *v.* Gordon, 2 App. Cas. 616, 629.
[2] Crook *v.* Jadis, 5 B. & Ad. 909.
[3] Jones *v.* Gordon, 2 App. Cas. 616.

Sec. 90. This section is new. An agent may in general be appointed verbally. Some statutes, *e.g.* Statute of Frauds, Secs. 1 and 3, require an agent to be specially authorized in writing, whilst the 4th and 17th sections contain no such provisions.

It would seem that an agent under this section need not be appointed in writing. See *ante*, Sec. 25 and notes thereto. In one case it was doubted by the court whether an agent appointed by word of mouth had authority to sign a renunciation under Sec. 61.[1]

As a corporation aggregate can in general act only by deed, its agent cannot be appointed by parol.[2]

As to corporations.

(2). In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Before this Act, there was a difference of opinion as to whether an instrument in form a note, under seal, was not rather a specialty than a negotiable instrument.[3]

There is authority to show that if an instrument, in form, a note, is signed and sealed it loses its character as a negotiable instrument.[4]

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[1] *In re* George, Francis *v.* Bruce, 44 Ch. Div. 627, at p. 632.

[2] Arnold *v.* Mayor of Poole, 4 M. & G. 860.

[3] Merchants' Bank *v.* United Empire Club, 44 U.C.R. 468; Dutton *v.* Marsh, L.R. 6 Q.B. 361; Crouch *v.* The Credit Foncier of England, L.R. 8 Q.B. 374.

[4] Merritt *v.* Cole, 9 Hun. R. 98; Daniel Negotiable Instruments, Secs. 31, 32.

Under the Ontario Municipal Act, Rev. Stat. Ont. 1887, Cap. 184, Sec. 413, Municipal Corporations have power to give notes See Sec. 22 (1) and notes thereto.[1] Secs. 90, 91, 92.

It is not likely that the practice of sealing, without authentication by attesting signatures, will be countenanced very generally by banks, or holders for value, owing to the facility with which irresponsible parties might affix the seal. An unlawful affixing of a corporate seal with intent to defraud would probably be held to be a forgery, R.S.C., Cap. 165, Sec. 46.

91. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded: "non-business days," for the purposes of this Act; mean (the days mentioned in the fourteenth section of this Act); any other day is a business day. Computation of time.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 92.*)

In the Imperial Act the words in brackets do not appear, but instead "(*a*) Sunday, Good Friday, Christmas Day; (*b*) A bank holiday under the Bank Holidays Act 1871, or Acts amending it; (*c*) A day appointed by royal proclamation as a public fast or Thanksgiving Day."

This section is new.

92. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill (or note) has been noted for protest before the expiration of When noting is equivalent to protest.

[1] Armstrong *v.* Township of Garafraxa, 44 U.C.R. 515.

Secs. 92, 93.

the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 93.*)

The words in brackets are omitted in the Imperial Act.

This is new. The object of this section is to show that by the use of the word "protesting" it is not intended that the extension should be necessary. It may be drawn up at the notary's leisure. Thus where a bill is accepted or paid *supra* protest, the bill must be protested before the acceptance or payment as the case may be, see *ante*, Secs. 64, 67: but it is sufficient if the bill be merely noted, the protest may be drawn up or extended afterwards:[1] even after the commencement of an action.[2]

The protest when drawn up is *prima facie* evidence of presentation and of dishonour, and of the service of the notice thereof, as stated in such protest, Sec. 93 (5).

Protest when notary is not accessible.

93. (1). Where a dishonoured bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any (justice of the peace resident in the place may present and protest such bill and give all necessary notices, and shall have all the necessary powers of a notary in respect thereto).

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 94.*)

In the Imperial Act after the word "bill" in the first line "or note" is inserted, and instead of the words in brackets, the following words occur, "householder or substantial resi-

[1] Geralopulo *v.* Wieler, 10 C.B. 690.

[2] *Ibid.*

dent of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill." Sec. 93.

This section is new. The provision is taken from the code of Quebec. The justice of the peace could probably be called upon to do this merely as matter of favour, see notes to sub-section 3, *post*.

Although the section omits all reference to promissory notes, it seems clear, by force of Sec. 88, that the provision would apply to them. See also sub-section (5), *post*, where it is assumed to apply to them.

(2). The expense of noting and protesting any bill or note, and the postages thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon. Expenses.

This sub-section is not in the Imperial Act.

(3). Notaries may charge the fees in each Province heretofore allowed them. Fees chargeable.

This sub-section is not in the Imperial Act. There is no provision for payment of fees to a justice of the peace when he protests a bill under Sec. 93 It may well be doubted whether such fees, therefore, as may be paid to him will be collectible under sub-section 2, *ante*.

These fees in the Provinces of Ontario, Nova Scotia and Prince Edward Island, are fifty cents for the protest and twenty-five cents for each notice and the necessary postage, R.S.C., Cap. 123, Sec. 25. There is no separate fee for noting. In the Province of Quebec, the fees are much higher, see R.S.C., Cap. 123, Sec. 28 and Schedule B. to that Act. The fees in New Brunswick are regulated by a Provincial Statute.

Sec. 93. 94. Forms.

(4). The forms in the first schedule to this Act may be used in noting or protesting any bill or note and in giving notice thereof. A copy of the bill or note and indorsement may be included in the forms, or the original bill or note may be annexed and the necessary changes in that behalf made in the forms:

Evidence of presentation, dishonour and notice.

(5). A protest of any bill or note, and any copy thereof as copied by the notary or justice of the peace, shall, in any action be *prima facie* evidence of presentation and dishonour, and also of service of notice of such presentation and dishonour as stated in such protest.

These sub-sections are not in the Imperial Act.

See also Rev. Stat. Ont. 1887, Cap. 61, Secs. 31, 32 and 33. A protest is only *prima facie* evidence: therefore if the facts as stated in such protest or any of them were disputed, it would be necessary to prove them by oral testimony in the usual way.[1]

Dividend warrants may be crossed

94. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 95.*)

This section was introduced into the Imperial Act from 39 and 40 Vic., Cap. 81, Sec. 3, which applied only to the dividend warrants of the Bank of England and Bank of Ireland.

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[1] Merchants' Bank *v.* McDougall, 30 C.P. 236; see also Southam *v.* Ranton, 9 A.R. 530; Fitch *v.* Kelly, 44 U.C.R. 578.

The present enactment applies to all bank dividend warrants. Secs. 94, 95.

As to the provisions relating to crossed cheques, see *ante*, Secs. 75-81.

95. (1). The enactments mentioned in the second schedule to this Act are hereby repealed, as from the commencement of this Act, to the extent in that schedule mentioned: Repeal.

Provided, that such appeal shall not affect anything done or suffered, or any right, title or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title or interest. Proviso.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 96.*)

The Imperial Statutes relating to Bills and Notes *e.g.* such statutes as 3 and 4 Anne, Cap. 9, in force in the several Provinces of Canada are not repealed. Perhaps this was an oversight.

(2). Nothing in this Act or in any repeal effected thereby shall affect the provisions of "The Bank Act." "The Bank Act," not affected.

Not in the Imperial Act. "The Bank Act" in force after 1st July, 1891, will be 53 Vic., Cap. 31, which repeals R.S.C. Cap 120, and amending Acts.

(3). The Act of the Parliament of Great Britain passed in the fifteenth year of the reign of His late Majesty George III., intituled "An Act to restrain the negotiation of Promissory Imperial Acts 15 Geo. III., Cap. 51, and 17 Geo. III., Cap. 30, not to apply.

Secs. 95, 96, 97.

Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England," and the Act of the said Parliament passed in the seventeenth year of His said Majesty's reign, intituled "An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England," shall not extend to or be in force in any Province of Canada, nor shall the said Acts make void any bills, notes, drafts or orders which have been or may be made or uttered therein.

Not in the Imperial Act. Taken from R.S.C., Cap. 123, Sec. 26.

The Acts referred to are repealed in England, 15 Geo. III., Cap. 51, by 48 Geo. III., Cap. 88, Sec. 1, and 17 Geo. III., Cap. 30, by 45 and 46 Vic., Cap. 61, Sec. 96, and were passed to restrict the negotiating of promissory notes and inland bills of exchange for less than twenty shillings originally, but afterwards extended to five pounds.

Construction with other Acts etc.

96. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed and shall operate as if it referred to the corresponding provisions of this Act.

(*Imperial Act 45 and 46 Vic., Cap. 61, Sec. 99.*)

Commencement of Act

97. This Act shall come into force on the first day of September next.

This Act, it is submitted, will not apply to rights acquired under bills or notes drawn, accepted or made before the first

day of September 1890;[1] nor to acts done before that date, since no retroactive effect is to be attributed to new laws, nor do they affect or interfere with rights already acquired.[2] *Nova constitutio futuris Formam imponere debet, non præteritis.*[3] The principle of this maxim is one of such obvious convenience and justice that it must always be adhered to in the construction of statutes, unless in cases where there is something on the face of the enactment putting it beyond doubt that the Legislature meant it to operate retrospectively.[4] Sec. 97.

It is likewise submitted the Act will not apply to the transference or indorsement of bills or notes after the first day of September if made before; but will govern matters of procedure.[5]

But even in cases where the enactments of the Act do not apply, they may still be looked to, for the most part, as evidence of what was the general understanding before it was passed, and of what the law was upon the subject.[6]

See also our Interpretation Act, R.S.C., Cap. 1, Sec. 57, and proviso to section 95, *ante*.

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[1] McLean *v.* Clydesdale Banking Co., 9 App. Cas. 95, per Ld. Blackburn p. 105; see also Commercial Bank of Canada *v.* Harris, 26 U.C.R. 594.

[2] Savigny's International Law, Sec. XLI., p. 280.

[3] 2 Inst., 292 Bac. Abr. Statute (*c*).

[4] Moon *v.* Durden, 2 Exch. 22; 12 Jur. 138; Dash *v.* Van Kleeck, 7 Johns R. 503.

[5] Savginy's International Law, p. 281; see also Bank of Montreal *v.* Scott, 17 C.P. 358, per A. Wilson, J., at p. 363.

[6] McLean *v.* Clydesdale Banking Co., 9 App. Cas. 95, per Ld. Blackburn, p. 106.

FIRST SCHEDULE.

Form A.

NOTING FOR NON-ACCEPTANCE.

(*Copy of Bill and Indorsements.*)

On the 18 , the above bill was, by me, at the request of , presented for acceptance to E. F., the drawee, personally (*or*, at his residence, office or usual place of business), in the city (town *or* village) of and I received for answer, "
"; The said bill is therefore noted for non-acceptance.

A. B.,
Notary Public.

(*Date and Place.*) 18 .

Due notice of the above was by me served upon { A. B., / C. D., } the { drawer, / indorser, } personally, on the day of (*or*, at his residence, office or usual place of business) in , on the day of (*or*, by depositing such notice, directed to him, at , in Her Majesty's post-office in the city [town *or* village], on the day of , and prepaying the postage thereon.)

A. B.,
Notary Public.

(*Date and Place.*) 18 .

Form B.

Form B.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

(*Copy of Bill and Indorsements.*)

On this day of , in the year 18 , I, A B., Notary Public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the {drawee / acceptor} thereof personally (*or*, at his residence, office *or* usual place of business) in , and, speaking to himself (*or* his wife, his clerk, *or* his servant, &c.,) did demand {acceptance / payment} thereof; unto which demand {he / she} answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and indorsers (*or* drawer and indorsers) of the said bill, and other parties thereto or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of {acceptance / payment} of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

Form C.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE AT A STATED PLACE.

(*Copy of Bill and Indorsements.*)

On this day of , in the year 18 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F. the {drawee / acceptor} thereof, at , being the stated place where the said bill is payable, and there, speaking to did demand {acceptance / payment} of the said bill; unto which demand he answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and indorsers (*or* drawer and indorsers) of the said bill, and all other parties thereto or therein concerned, for all exchange, re-exchange, costs, damages and interest, present and to come, for want of {acceptance / payment} of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

Form D.

Form D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PROTESTED, FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill it should immediately follow the act of noting and memorandum of service thereof, and begin with the words "and afterwards on, &c.," *continuing as in the last preceding form, but introducing between the words* "did" *and* "exhibit," *the word* "again," *and, in a parenthesis, between the words* "written" *and* "unto," *the words:* "and which bill was by me duly noted for non-acceptance on the day of "

But if the protest is not made by the same notary, then it should follow a copy of the original bill and indorsements and noting marked on the bill—and then in the protest introduce, in a parenthesis, between the words "written" *and* "unto," *the words:* "and which bill was on the day of , by , notary public for the Province of , noted for non-acceptance, as appears by his note thereof marked on the said bill."

Form E.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(*Copy of Note and Indorsements.*)

On this day of , in the year 18 , I A.B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, personally (*or*, at his residence, office *or* usual place of business), in , and speaking to himself (*or* his wife, his clerk *or* his servant, &c.), did demand payment thereof; unto which demand { he / she } answered: " "

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

Form F.

Form F.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

(*Copy of Note and Indorsements.*)

On this day , in the year 18 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto the promisor, at , being the stated place where the said note is payable, and there, speaking to did demand payment of the said note, unto which demand he answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

Form G.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR NON-ACCEPTANCE, OR OF A PROTEST FOR NON-PAYMENT OF A BILL.

(*Place and date of Noting or of Protest.*)

1st.

To P. Q. (*the drawer.*)
at

Sir,

Your bill of exchange for $, dated at
the , upon E. F., in favor of C. D., payable days
after {sight, / date} was this day, at the request of
duly {noted / protested} by me for {non-acceptance. / non-payment.}

A. B.,
Notary Public.

(*Place and date of Noting or of Protest.*)

2nd.

To C. D. (*indorser*),
(*or* F. G.)
at

Sir,

Mr. P. Q.'s bill of exchange for $, dated at ,
the , upon E. F., in your favor (*or* in favor of C. D.,)
payable days after {sight, / date,} and by you indorsed, was
this day, at the request of duly
{noted / protested} by me for {non-acceptance. / non-payment.}

A. B.,
Notary Public.

Forms H, I.

Form H.

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

(*Place and date of Protest.*)

To ,
at

Sir,

Mr. P. Q.'s promissory note for $, dated at , the payable { days / months / on —— } after date to { you / E. F. } or order, and indorsed by you, was this day, at the request of , duly protested by me for non-payment.

A. B.,
Notary Public.

Form I.

NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR NON-PAYMENT OF A BILL, OR OF NON-PAYMENT OF A NOTE (*to be subjoined to the Protest.*)

And afterwards, I, the aforesaid protesting notary public did serve due notice, in the form prescribed by law, of the foregoing protest for { non-acceptance / non-payment } of the { bill / note } thereby protested upon { P. Q., / C. D., } the { drawer / indorsers } personally, on the day of (*or*, at his residence, office, *or* usual place of business) in , on the day of ; (*or*, by depositing such notice, directed to the said { P. Q., / C. D., } at , in Her Majesty's post-office in on the day of , and prepaying the postage thereon).

In testimony whereof, I have, on the last mentioned day and year, at aforesaid, signed these presents.

A. B.,
Notary Public.

Form J. **Form J.**

PROTEST BY A JUSTICE OF THE PEACE (WHERE THERE IS NO NOTARY) FOR NON-ACCEPTANCE OF A BILL, OR NON-PAYMENT OF A BILL OR NOTE.

(*Copy of Bill or Note and Indorsements.*)

On this day of , in the year 18 , I, N. O., one of Her Majesty's justices of the peace for the district (*or* county, &c.), of , in the Province of , dwelling at (*or* near) the village of , in the said district, there being no practising notary public at or near the said village (*or any other legal cause*), did, at the request of and in the presence of well known unto me, exhibit the original { bill / note } whereof a true copy is above written unto P. Q., the { drawer / acceptor / promisor } { thereof, personally (*or* at his residence, office *or* usual place of business) in , and speaking to himself (his wife, his clerk *or* his servant, &c.), did demand { acceptance / payment } thereof, unto which demand { he / she } answered: " ."

Wherefore I, the said justice of the peace, at the request aforesaid, have protested, and by these presents do protest against the { drawer and indorsers / promisor and indorsers / acceptor, drawer and indorsers } of the said { bill / note } and all other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance / payment } of the said { bill. / note. }

All which is by these presents attested by the signature of the said (*the witness*) and by my hand and seal.

(Protested in duplicate)

(*Signature of the witness.*)

(*Signature and seal of the J. P.*)

SECOND SCHEDULE.

ENACTMENTS REPEALED.

PROVINCE AND CHAPTER.	TITLE OF ACT AND EXTENT OF REPEAL.
Dominion of Canada: Chap. 123, Revised Statutes..	An Act respecting Bills of Exchange and Promissory Notes.—The whole Act.
Province of Quebec: Civil Code of Lower Canada	Articles 2,279 to 2,354, both inclusive [*].
Nova Scotia: Revised Statutes, third series, chap. 82.....	"Of Bills of Exchange and Promissory Notes." Sec. 2. The other sections of this chapter have been heretofore repealed.
New Brunswick: Revised Statutes, chap. 116..	"Of Bills, Notes and Choses in Action." Sec. 2. The other sections of this chapter have been heretofore repealed.
30 Vict., 1867, chap. 34	An Act to amend chap. 116 of the Revised Statutes, "Of Bills, Notes and Choses in Action"; also Act 12th Victoria, chapter 39, relating thereto. Section 1.

[*Except in so far as such articles, or any of them, relate to evidence in regard to bills of exchange, cheques and promissory notes.]

Forms 1, 2, 3.

No. 1.

INLAND BILL OF EXCHANGE.

$500.

MONTREAL, 10*th Sept.*, 1890.

Thirty days after sight, pay to the order of ourselves the sum of five hundred dollars, value received.

C. D. & SON.

To Messrs. A. B. & Co.,
Toronto.

No. 2.

FOREIGN BILL OF EXCHANGE.

(Drawn out of Canada but payable here.)

No. 131a.

£500. LONDON, ENG., 10*th Oct.*, 1890.

At sixty days after sight, pay this original of Exchange (duplicate unpaid) to the order of A. B. & Co., five hundred pounds sterling, value received, and charge to account of your letter of credit No. 581.

UNION BANK OF LONDON,

Per C. D., Cashier.

To the Bank of British North America,
Toronto, Ont.

No. 3.

FOREIGN BILL OF EXCHANGE.

Drawn in but payable out of Canada.

No. 140.

$500. KINGSTON, ONT., 10*th Oct.*, 1890.

At thirty days after date, pay this first of Exchange (second and third unpaid) to the order of A. B. & Co., five hundred dollars, value received, and charge to account of

C. D.

To The Union Bank of London,
London, England.

Forms 4, 5, 6.

No. 4.

PROMISSORY NOTE.

$1,000.

LONDON, ONT., *1st Oct.*, 1890.

Four months after date, I promise to pay to A. B., or order, at the Bank of British North America here, the sum of one thousand dollars, for value received.

C. D.

No. 5.

CHEQUE CROSSED GENERALLY.

$150.

KINGSTON, ONT., *1st Oct.*, 1890.

To The Bank of British North America.

Pay A. B., or order, the sum of one hundred and fifty dollars.

C. D.

No. 6.

CHEQUE CROSSED SPECIALLY.

$324.

HAMILTON, *1st Nov.*, 1890.

To The Bank of Hamilton.

Bank of Montreal.

Pay E. F., or order, the sum of three hundred and twenty-four dollars.

G. A. & Co.

Form 7.

No. 7.

PROTEST FOR NON-ACCEPTANCE OF A BILL OF EXCHANGE PAYABLE GENERALLY, AND NOTARIAL SERVICE OF NOTICE THEREOF.

ON THIS tenth day of October, in the year 1890, I, A. B., a Notary Public for the Province of Ontario, dwelling at the Town of Galt, in the Province of Ontario, at the request of C. D., did exhibit the original Bill of Exchange hereunto annexed *(unto E. F., the drawee thereof, personally)* in the said Town of Galt, and speaking to him did demand acceptance thereof, to which demand he answered: (*"I have remitted funds."*)

WHEREFORE I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the drawer and indorser of the said bill and all other parties thereto or therein concerned for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of acceptance of the said bill.

ALL of which I attest by my signature,

A. B.,
Notary Public.

Protest .50c.
Notices.50c.
Postage.06c.
$1.06

AND AFTERWARDS I, the aforesaid protesting Notary Public did serve due notice, in the form prescribed by law, of the foregoing protest for non-acceptance of the bill thereby protested upon G. H., the drawer, and J. K., indorser, by depositing such notices, directed to the said G. H. and J. K. respectively, as follows, namely, to the said:

Mr. G. H., Toronto, Ont.

Mr. J. K., Toronto, Ont.

in Her Majesty's post-office, in the said Town of Galt, on the eleventh day of October, 1890, and prepaying the postage thereon.

IN TESTIMONY WHEREOF, I have, on the last mentioned day and year, at Galt, aforesaid, signed these presents.

A. B.,
Notary Public.

Form 8.

No. 8.

PROTEST FOR NON-ACCEPTANCE OF BILL OF EXCHANGE PAYABLE AT STATED PLACE AND NOTARIAL SERVICE OF NOTICE THEREOF.

ON THIS tenth day of September, in the year 1890, I, A. B., a Notary Public for the Province of Ontario, dwelling at London, in the Province of Ontario, at the request of C. D., did exhibit the original Bill of Exchange hereunto annexed unto (*E. F., the drawer, at his usual place of business*) at the said City of London, and speaking to him did demand acceptance of the said bill, unto which demand he answered: ("*I do not owe the amount of the bill.*")

WHEREFORE I, the said Notary, at the request aforesaid, have protested and by these presents do protest against the drawer and indorser of the said bill, and all other parties thereto or therein concerned for all exchange, re-exchange, costs, damages and interest, present and to come, for want of acceptance of the said bill.

ALL of which I attest by my signature.

A. B.,
Notary Public.

Protest .50c
Notices .50c
Postage .06c
$1.06

AND AFTERWARDS I, the aforesaid protesting Notary Public, did serve due notice, in the form prescribed by law, of the foregoing protest for non-acceptance of the bill thereby protested upon G. H., the drawer, and J. K., the indorser, by depositing such notices, directed to the said G. H. and J. K. respectively, as follows, namely, to the said:

Mr. G. H., Kingston, Ont.

Mr. J. K., Toronto, Ont.

in Her Majesty's post-office, in the said City of London, on the eleventh day of September, 1890, and prepaying the postage thereon.

IN TESTIMONY WHEREOF, I have, on the last mentioned day and year, at London aforesaid, signed these presents.

A. B.,
Notary Public.

Form 9.

No. 9.

PROTEST FOR NON-PAYMENT OF A BILL OF EXCHANGE PAYABLE GENERALLY, WITH NOTARIAL SERVICE OF NOTICE THEREOF.

ON THIS tenth day of September, in the year 1890, I, A. B., a Notary Public for the Province of Ontario, dwelling at the City of Kingston, in the Province of Ontario, at the request of C. D., did exhibit the original Bill of Exchange, hereunto annexed, unto (*a clerk of the said E. F., the acceptor thereof, at his usual place of business*) in the said City of Kingston, and speaking to him, did demand payment thereof, to which demand he answered : ("*I have no instructions to pay.*")

WHEREFORE I, the said Notary, at the request aforesaid have protested, and by these presents do protest against the acceptor, drawer and indorser of the said bill and all other parties thereto or therein concerned for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of payment of the said bill.

ALL of which I attest by my signature.

Protest .50c.
Notices.75c.
Postage.08c.
$1.33

A. B.,
Notary Public.

AND AFTERWARDS I, the aforesaid protesting Notary Public, did serve due notice, in the form prescribed by law, of the foregoing protest for non-payment of the bill thereby protested upon E. F., the acceptor, G. H., the drawer, and J. K., the indorser, by depositing such notices, directed to each of them respectively, as follows, namely, to the said :

Mr. E. F., Kingston, Ont.

Mr. G. H., Montreal, Que.

Mr. J. K., Montreal, Que.

in Her Majesty's post-office in the said City of Kingston, on the eleventh day of September, 1890, and prepaying the postage thereon.

IN TESTIMONY WHEREOF, I have, on the last mentioned day and year, at Kingston, aforesaid, signed these presents.

A. B.,
Notary Public.

Form 10.

No. 10.

PROTEST FOR NON-PAYMENT OF BILL OF EXCHANGE PAYABLE AT STATED PLACE, WITH NOTARIAL SERVICE OF NOTICE THEREOF.

ON THIS fourteenth day of October, in the year 1890, I, A. B., a Notary Public for the Province of Ontario, dwelling at the City of Guelph, in the Province of Ontario, at the request of C. D., did exhibit the original Bill of Exchange hereunto annexed unto a clerk in the Dominion Bank, at the City of Guelph, being the stated place where the said bill is payable, and there speaking to him did demand payment of the said bill, unto which demand he answered: "*No funds.*"

WHEREFORE I, the said Notary, at the request aforesaid, have protested and by these presents do protest against the acceptor, drawer and indorser of the said bill, and all other parties thereto or therein concerned for all exchange, re-exchange, costs, damages and interest, present and to come for want of payment of the said bill.

ALL of which I attest by my signature.

A. B.,
Notary Public.

Protest .50c.
Notices.75c.
Postage.09c.
$1.34

AND AFTERWARDS I, the aforesaid protesting Notary Public, did serve due notice, in the form prescribed by law, of the foregoing protest for non-payment of the bill thereby protested upon E. F., the acceptor, G. H., the drawer, and J. K., the indorser, by depositing such notices, directed to the said E. F., G. H. and J. K. respectively as follows, namely, to the said:

Mr. E. F., Guelph, Ont.

Mr. G. H., Toronto, Ont.

Mr. J. K., Guelph, Ont.

in Her Majesty's post-office in Guelph, on the fifteenth day of October, 1890, and prepaying the postage thereon.

IN TESTIMONY WHEREOF, I have, on the last mentioned day and year, at Guelph aforesaid, signed these presents.

A. B.,
Notary Public.

Form 11.

No. 11.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY, WITH NOTARIAL SERVICE OF NOTICE THEREOF.

ON THIS first day of October, in the year 1890, I, A. B., a Notary Public for the Province of Ontario, dwelling at the town of Peterboro', in the Province of Ontario, at the request of C. D., did exhibit the original Promissory Note hereunto annexed unto (*E. F., the promisor personally*) in the said Town of Peterboro', and speaking to him did demand payment thereof, unto which demand he answered: ("*I have no funds.*")

WHEREFORE I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and indorser of the said note and all other parties thereto or therein concerned, for all costs, damages, and interest, present and to come, for want of payment of the said note.

ALL of which I attest by my signature.

A. B.,
Notary Public.

Protest.50c.
Notices.75c.
Postage.05c.
$1.30

AND AFTERWARDS I, the aforesaid protesting Notary Public, did serve due notice, in the form prescribed by law, of the foregoing protest for non-payment of the note thereby protested upon E. F., the promisor, and G. H., and J. K., the indorsers thereof, by depositing such notices, directed respectively as follows, namely, to the said:

Mr. E. F., Peterboro', Ont.

Mr. G. H., Peterboro', Ont.

Mr. J. K., Toronto, Ont.

in Her Majesty's post-office in Peterboro', on the second day of October, 1890, and prepaying the postage thereon.

IN TESTIMONY WHEREOF, I have, on the last mentioned day and year, at Peterboro', Ontario, aforesaid, signed these presents.

A. B.,
Notary Public.

Form 12.

No. 12.

PROTEST FOR NON-PAYMENT OF PROMISSORY NOTE PAYABLE AT STATED PLACE, WITH NOTARIAL SERVICE OF NOTICE THEREOF.

ON THIS seventh day of November, in the year 1890, I, A. B., a Notary Public for the Province of Ontario, dwelling at the City of Hamilton, in the Province of Ontario, at the request of C. D., did exhibit the original Promissory Note hereunto annexed, unto a clerk at the Bank of Montreal, at the said City of Hamilton, being the stated place where the said note is payable, and there speaking to him did demand payment of the said note, unto which demand he answered "*No funds.*"

WHEREFORE I, the said Notary, at the request aforesaid, have protested and by these presents do protest against the promisor and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

ALL of which I attest by my signature.

A. B.,
Notary Public.

Protest .50c.
Notices .75c.
Postage.06c.
$1.31

AND AFTERWARDS I, the aforesaid protesting Notary Public, did serve due notice, in the form prescribed by law, of the foregoing protest for non-payment of the note thereby protested upon E. F., the promisor and G. H. and J. K., the indorsers, by depositing such notices, directed respectively as follows, namely, to the said :

Mr. E. F., Hamilton, Ont.

Mr. G. H., Hamilton, Ont.

Mr. J. K., Hamilton, Ont.

in Her Majesty's post-office in the said City of Hamilton, on the seventh day of November, 1890, and prepaying the postage thereon.

IN TESTIMONY WHEREOF, I have, on the last mentioned day and year, at Hamilton aforesaid, signed these presents.

A. B.,
Notary Public.

Forms 13, 14, 15.

No. 13.

NOTARIAL NOTICE TO DRAWER OF PROTEST FOR NON-ACCEPTANCE OF BILL.

KINGSTON, ONT., *5th October*, 1890.

To C. D., Montreal, Que.

SIR,—Your Bill of Exchange for $500, dated at Montreal the 1st day of October, 1890, upon E. F., in favour of G. H., payable ten days after date, was this day, at the request of J K., duly protested by me for non-acceptance.

A. B.,
Notary Public.

No. 14.

NOTARIAL NOTICE TO DRAWER OF PROTEST FOR NON-PAYMENT OF BILL.

KINGSTON, ONT., *14th October*, 1890.

To C. D., Montreal, Que.

SIR,—Your Bill of Exchange for $500, dated at Montreal the 1st day of October, 1890, upon E. F., in favour of G. H., payable ten days after date, was this day, at the request of J. K., duly protested by me for non-payment.

A. B.,
Notary Public.

No. 15.

NOTARIAL NOTICE TO ACCEPTOR OF PROTEST FOR NON-PAYMENT OF BILL.

KINGSTON, ONT., *14th October*, 1890.

To Mr. E. F., Kingston, Ont.

SIR,—Mr. C. D.'s Bill of Exchange for $500, dated at Montreal the 1st day of October, 1890, upon you in G. H.'s favour, payable ten days after date, and by you accepted, was this day, at the request of J. K., duly protested by me for non-payment.

A. B ,
Notary Public.

No. 16.

NOTARIAL NOTICE TO INDORSER OF PROTEST FOR NON-ACCEPTANCE OF BILL.

KINGSTON, ONT., *6th October*, 1890.

To Mr. G. H., Montreal, Que.

SIR,—Mr. C. D.'s Bill of Exchange for $500, dated at Montreal the 1st day of October, 1890, upon E. F., in your favour, payable ten days after date, and by you indorsed, was this day, at the request of J. K., duly protested by me for non-acceptance.

A. B.,
Notary Public.

No. 17.

NOTARIAL NOTICE TO INDORSER OF PROTEST FOR NON-PAYMENT OF BILL.

KINGSTON, ONT., *14th October*, 1890.

To Mr. G. H., Montreal, Que.

SIR,—Mr. C. D.'s Bill of Exchange for $500, dated at Montreal the 1st day of October, 1890, upon E. F., in your favour, payable ten days after date, and by you indorsed, was this day, at the request of J. K., duly protested by me for non-payment.

A. B.,
Notary Public.

No. 18.

NOTARIAL NOTICE TO MAKER OF PROTEST OF NOTE.

KINGSTON, ONT., *4th October*, 1890.

To C. D., Kingston, Ont.

SIR,—Your Promissory Note for $180, dated at Kingston the 1st day of October, 1889, payable twelve months after date to E. F. or order, and indorsed by him, was this day, at the request of G. H., duly protested by me for non-payment.

A. B.,
Notary Public.

Forms 19, 20.

No. 19.

NOTARIAL NOTICE TO INDORSER OF PROTEST OF NOTE.

KINGSTON, ONT., *4th October*, 1890.

To Mr. E. F., Kingston, Ont.

SIR,—Mr. C. D.'s Promissory Note for $180, dated at Kingston the 1st day of October, 1889, payable twelve months after date, to yourself or order, and by you indorsed, was this day, at the request of G. H., duly protested by me for non-payment.

A. B.,
Notary Public.

No. 20.

NOTARIAL ACT OF HONOUR ATTESTING PAYMENT OF A BILL FOR HONOUR *SUPRA* PROTEST.

ON this 1st day of October, 1890, I, A. B., a notary public for the Province of Ontario, dwelling at the City of Toronto, in the said Province, do hereby certify that the Bill of Exchange hereunto annexed, duly protested for non-payment, was this day exhibited unto C. D., of Toronto, who declared before me that he would pay the amount of the said bill for the honour of E. F., an indorser thereof, holding the drawer and all prior indorsers and all other proper persons responsible to him, the said C. D., for the said sum, and for all interest, damages and expenses.

I have therefore granted this notarial act of honour accordingly.

[L. S.] All of which I attest by my signature and official seal.

A. B.,
Notary Public.

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